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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: July 11, 2016) Case No.: PSH-16-0064
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Issued: September 28, 2016

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXX (“the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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 access authorization should be restored at this time.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s arrest for Driving Under the Influence (DUI). In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in October 2015.

On June 6, 2016, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. See 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in

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.

the security regulations at 10 C.F.R. § 710.8(h) and (l) (hereinafter referred to as Criterion H and Criterion L).²

After receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing convened pursuant to § 10 C.F.R. § 710.25 (e) and (g), the DOE introduced nine exhibits (DOE Exs. 1-9) into the record and presented the testimony of a DOE psychologist. The Individual presented his own testimony, the testimony of two co-workers, and his wife. The Individual also submitted two exhibits (Ind. Exs. A-B). *See* Transcript of Hearing, Case No. PSH-16-0064 (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 and 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 [or her] 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

² Criterion H refers to information indicating that an individual has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion L refers to information indicating that the Individual has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

III. Notification Letter and Associated Security Concerns

As previously noted, the LSO cites Criteria H and L as the bases for suspending the Individual's security clearance. The LSO cites as Criterion H derogatory information an evaluative report from the DOE psychologist opining that the Individual suffers from a cognitively distorted perception which comprises a mental condition which causes, or may cause, a significant defect in judgment or reliability. DOE Ex. 4 at 8; DOE Ex. 1. Certain emotional, mental, and personality conditions can impair judgment, reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline I, at ¶ 27 (Adjudicative Guidelines). With regard to Criterion L, the LSO cites the Individual's admission that he consumed alcohol despite knowing he was restricted from consuming alcohol due to a DUI release agreement (DUI Release). DOE Ex. 1; *see* DOE Ex. 6; DOE Ex. 4 at 3-6; DOE Ex. 9 at 25-26. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

IV. Hearing Testimony and Evidence

The Individual was arrested for DUI in August 2015. DOE Ex. 1 at 3; DOE Ex. 6. Immediately after his DUI, the Individual notified his supervisor. Tr. at 10. The Individual's supervisor and co-worker testified that the Individual is an extremely trustworthy and honest. Tr. at 12, 19. The supervisor testified that he has never seen the Individual deceitful and that the Individual is a true professional and one of the most respected professionals at their company. Tr. at 13. The Individual's co-worker stated that the Individual's "word is his bond." Tr. at 20. He continued that the Individual is a trusted colleague. Tr. at 22. The co-worker concluded that the Individual "does not bend the rules." Tr. at 25-26.

The Individual's wife stated that the Individual is "a man of excellence" and integrity. Tr. at 41. She concluded that trust is very important to the Individual. Tr. at 41. The Individual stated that he tried to find "wiggle room" in the DUI Release and he was in denial. Tr. at 46, 48. He finished that he stopped consuming alcohol immediately after his interview with the DOE psychologist. Tr. at 59.

In her report, the DOE psychologist opined that the Individual's

failure to abstain from alcohol as required by his Release and Bond Agreement and his DUI Compliance Checklist; his deception regarding these requirements; and his rationalization that he will not be controlled, indicate a cognitively distorted perception which comprises a mental condition which causes, or may cause, a significant defect in judgment or reliability.

DOE Ex. 4 at 8. At the hearing, the DOE psychologist testified that the Individual's demeanor and attitude were different than when they met for the evaluation. Tr. at 65. She stated that he has "come to an understanding . . . about what he was doing as part of the denial [of his violation of the DUI release agreement] – I said cognitive distortions – in playing with the truth in trying to perceive things in a certain way and then represent them that way." Tr. at 65-66. The DOE

psychologist testified that the behavioral changes she saw at the hearing sufficiently mitigated the mental condition she diagnosed at the initial evaluation. Tr. at 67.

V. Administrative Judge's Findings and 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should be restored. I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

As an initial matter, I find that the LSO has properly raised security concerns under Criteria H and L, regarding the Individual's diagnosis by the DOE psychologist and his failure to abstain from alcohol after his DUI. A diagnosis by a duly qualified medical professional that an individual suffers from a medical condition that can impair judgment, reliability or trustworthiness, is specifically mentioned in the Adjudicative Guidelines as a condition that could raise a security concern. Adjudicative Guidelines, ¶ 27(b). Further, deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative is mentioned in the Adjudicative Guidelines as a condition that could raise a security concern. Adjudicative Guidelines, ¶ 16 (b).

In considering whether the Individual has resolved the properly raised security concerns, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate the Criterion H security concern, including: "recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation." Adjudicative Guidelines, ¶ 29 (c). The relevant paragraph lists conditions that could mitigate the Criterion L security concern, including: "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicative Guidelines, ¶ 17 (c).

Given the above factors, I find that the Individual has resolved the security concerns raised by the LSO. With respect to the Criterion H concern, the DOE psychologist opined at the hearing that the Individual no longer suffers from the mental condition which led her to her initial diagnosis. The DOE psychologist based her testimony on the Individual's demeanor at the hearing. The Individual took responsibility for consuming alcohol after his DUI, even though his release agreement stated he must be abstinent. He testified that he was in denial and trying to find "wiggle room" in the agreement. The Individual stated that he misled his co-worker into believing that he misunderstood the release agreement. The DOE psychologist was very impressed that the Individual was finally taking responsibility for his behavior and no longer in denial about the requirement that he be abstinent. "What was persuasive was [the Individual] saying it wasn't a misunderstanding – like [his co-worker] said . . . and [the Individual] took responsibility for saying that that's because that's what I was feeding [his co-worker], that's the perception I was trying to

give him.” She concluded that her clinical perception of the Individual was much different from when she saw him for the initial evaluation. The DOE psychologist’s testimony satisfies ¶ 29 (c) above.

With respect to the Criterion L concern, the Individual’s witnesses testified that he is an exceptionally honest person. His witnesses have each known him for well over 15 years, with his supervisor having known him for 30 years. Tr. at 10, 17, 19, 32, 41. The Individual testified that he was “trying to find wiggle room, loopholes in the verbiage that said, ‘[w]ell, that doesn’t apply to me.’” Tr. at 46. The Individual’s co-worker testified that he believed the Individual misunderstood the requirement that he not consume alcohol. Tr. at 24. During his testimony, the Individual stated that he did not misunderstand the requirement but rather he was misleading his co-worker about his requirement. Tr. at 57. Taking all the testimony together, including the DOE psychologist’s opinion that the Individual no longer suffers from a mental condition and his admitting that he misled his co-worker about the requirement to be abstinent, I find that the Individual has resolved the concern raised by the Criterion L concern. The Individual’s behavior was isolated and occurred under such unique circumstances that it is unlikely to recur and does not cast doubt on the Individual’s years of reliability, trustworthiness, or good judgment. The Individual’s witnesses compelling testimony satisfies ¶ 17 (c) above.

Based on the foregoing, I find that the Individual has resolved the security concerns raised by his diagnosis of a mental condition and his failure to remain abstinent as required by his DUI Release.

VI. Conclusion

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise serious security concerns under Criteria H and L. 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 brought forth sufficient evidence to resolve the security concerns associated those criteria. I therefore find that restoring the Individual’s access authorization will not endanger the common defense and is clearly consistent with the national interest. 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.

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

Date: September 28, 2016