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

In the Matter of: Personnel Security Hearing)
)
Filing Date: January 31, 2017)
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Case No.: PSH-17-0003

Issued: March 21, 2017

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) 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, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s security clearance should be restored.²

I. BACKGROUND

The Individual informed the Local Security Office (LSO) that he had been arrested for Aggravated Driving Under the Influence of Alcohol (ADUI). That arrest raised concerns regarding the Individual’s eligibility to hold a security clearance. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on July 7, 2016, and had the Individual evaluated by a Psychologist (the DOE Psychologist) on October 20, 2016. Ex. 4, Ex. 9. Because the PSI and the psychological examination did not resolve the security concerns raised by the Individual’s ADUI arrest, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. See 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on February 1, 2017. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his friend, his substance abuse counselor (the Substance Abuse Counselor), his therapist (the Therapist), his Employee Assistance Program (EAP) counselor (the EAP Counselor), and the DOE Psychologist. See Transcript of

¹ Under the Regulations, “Access authorization” means 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 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.energy.gov/OHA>.

Hearing, Case No. PSH-17-0003 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as DOE Exhibits 1 through 9. The Individual submitted seven exhibits, marked as Individual’s Exhibits 1 through 7.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005) (the Guidelines). The LSO alleges, under Guideline G, that the Individual has been diagnosed by the DOE Psychologist with Alcohol Dependence. The Individual’s Alcohol Dependence diagnosis, as alleged, adequately justifies the LSO’s invocation of Guideline G and raises significant security concerns. The Adjudicative Guidelines state: “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Guideline G at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are “Alcohol-related incidents away from work, such as driving while under the influence,” and “Diagnosis by a duly qualified medical professional (*e.g.* . . . clinical psychologist . . .) of . . . alcohol dependence.” Guideline G at ¶ 22 (a) and (d).

III. REGULATORY STANDARDS

The Administrative Judge’s role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that:

The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.

10 C.F.R. §§ 710.7(a). In rendering this opinion, I have considered the following factors:

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 of the individual at the time of the conduct; the voluntariness of 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.

See 10 C.F.R. § 710.7(c). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On May 28, 2016, the police arrested the Individual and charged him with ADUI.³ Ex. 8 at 4. After the Individual was arrested, the police administered two breathalyzer tests for alcohol to him. Both tests indicated that the Individual had a blood alcohol level of .17 percent. Ex. 8 at 5.

Because of the security concerns raised by the Individual's May 28, 2016, ADUI arrest, the LSO conducted a PSI of the Individual on July 7, 2016. Ex. 9 at 1. During this PSI, the Individual provided a detailed history and description of his alcohol use.⁴ Prior to his arrest, the Individual had been drinking every other day. Ex. 9 at 116. However, the Individual stated that his last use of alcohol had occurred on May 28, 2016. Ex. 9 at 70. The Individual acknowledged that he had an alcohol problem. Ex. 9 at 98-99. He sought assistance from the EAP, entered counseling, and began attending Alcoholics Anonymous (AA) in order to maintain his sobriety.⁵ Ex. 9 at 30-34. When the interviewer asked the Individual about his future intentions concerning alcohol, the Individual responded by stating: "Boy, um, certainly, y-you know, total abstinence for as long as it takes to get everything right with DOE and my clearance, and all of that." Ex. 9 at 99. The Individual further indicated that AA was causing him to consider permanently abstaining from alcohol use. Ex. 9 at 99.

Because the PSI did not resolve the security concerns raised by the Individual's May 28, 2016, ADUI arrest, the LSO requested that the Individual be evaluated by a DOE Psychologist. The DOE Psychologist examined the Individual on October 20, 2016. Ex. 4 at 2. On October 21, 2016, the DOE Psychologist issued a report, in which he noted that the Individual was: obtaining individual counseling for marriage-related issues, attending an Intensive Outpatient Program (IOP), obtaining individual counseling for his substance abuse issues from his EAP, attending AA meetings, and working the AA Twelve-Step Program. Ex. 4 at 3, 9. The Individual informed the DOE Psychologist that he last used alcohol on May 28, 2016. Ex. 4 at 5. The Individual further reported to the DOE Psychologist that he was considering abstaining from alcohol on a permanent basis. Ex. 4 at 6. The Individual also admitted that he experienced cravings for alcohol. Ex. 4 at 9. In his report, the DOE Psychologist opined that the Individual suffered from Alcohol Dependence, in early full remission, under the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition (DSM-IV), and Substance Abuse-Alcohol of severe intensity, in early full remission, under DSM-5. Ex. 4 at 7. The DOE Psychiatrist opined that this condition causes significant effects in the Individual judgment and reliability. Ex. 4 at 8-9. The DOE Psychologist recommended that the Individual permanently abstain from alcohol use. Ex. 4 at 8. The DOE Psychologist opined that the Individual needed to abstain from alcohol use for nine-months in order to establish reformation or rehabilitation. Ex. 4 at 8. The DOE Psychologist also expressed

³ The Individual was also charged with "Failure to Yield at Stop Sign, Roadway Laned for Traffic" and "Failure to Signal when Required." Ex. 8 at 4.

⁴ The Individual reported that he is subject to random alcohol tests at his work. Ex. 9 at 52. The Individual admitted that he had been intoxicated on a weekly basis, that his tolerance for alcohol had increased, he had experienced hangovers on a weekly basis, and that he had experienced blackouts. Ex. 9 at 63-68, 92. The Individual reported that he would come into work with a hangover "maybe a couple of times a month." Ex. 9 at 80. When he was married, his spouse would express concerns about his alcohol use. Ex. 9 at 84-86.

⁵ The Individual had not, as of the date of the PSI, obtained a sponsor. Ex. 9 at 109.

concerns that the Individual's treatment program was not as extensive as it should be, and recommended that the Individual add "more components to his substance treatment." Ex. 4 at 8.

V. ANALYSIS

The Individual resolved the security concerns discussed above by presenting the testimony of the Substance Abuse Counselor, the Therapist, a friend, and the EAP Counselor, as well as by providing his own testimony.

The Individual's Substance Abuse Counselor testified on his behalf. The Substance Abuse Counselor diagnosed the Individual with an Alcohol Use Disorder. Tr. at 21. The Substance Abuse Counselor testified that he began treating the Individual on July 8, 2016. Tr. at 18. The Substance Abuse Counselor described the Individual as "open and very cooperative." Tr. at 21-22. The Substance Abuse Counselor testified that the Individual had been participating in an IOP, a relapse prevention group, a substance use education group, individual substance abuse counseling (from the Substance Abuse Counselor), and was attending AA meetings. Tr. at 18, 23. He further reported that the Individual has completed the IOP and is now in aftercare. Tr. at 26. The Substance Abuse Counselor testified that he was unaware of any relapses by the Individual and that the Individual has been maintaining his sobriety. Tr. at 22, 27. The Substance Abuse Counselor testified that the Individual has accepted that he has a lifelong issue with alcohol and realizes that he should never use alcohol again. Tr. at 27. The Substance Abuse Counselor feels that the Individual's recovery has been going well. Tr. at 28. He characterized the Individual's likelihood of relapse as "relatively low." Tr. at 29.

The Therapist testified on the Individual's behalf.⁶ She testified that she is treating the Individual for his relationship and family issues rather than for his substance abuse. Tr. at 35-36. She opined that the Individual has an alcohol disorder. Tr. at 36. She testified that she believes that the Individual has not relapsed. Tr. at 37. The Therapist characterized the Individual as an "excellent patient" who has been very forthcoming with her and exhibits a great deal of insight into his problems. Tr. at 37. She testified that the Individual has a strong support system, which includes AA. Tr. at 37-38. The Therapist testified that the Individual plans to continue with his sobriety and to never drink again. Tr. at 38-39, 43. She testified that she would be "surprised" if he were to relapse because he is very dedicated and understands the consequences. Tr. at 38-39. She further described his prognosis as "excellent." Tr. at 44.

The Individual's friend testified on his behalf at the hearing. The friend testified that he spends a lot of time with the Individual, and that he no longer observes the Individual using alcohol. Tr. at 49-50. The Individual has been able to navigate his circle of friends without using alcohol. Tr. at 50. The Individual's circle of friends are very supportive of his decision to abstain from using alcohol. Tr. at 50-51. The friend reported that the Individual now seems happier. Tr. at 52.

The EAP Counselor testified that she has been treating, monitoring, and providing case management for the Individual since June 6, 2016. Tr. at 59, 61. She testified that the Individual is committed to his sobriety and that he is "a refreshingly honest, candid, open, articulate, expressive client." Tr. at 66. She testified that she has seen him undergo "tremendous growth."

⁶ The Individual has also submitted a letter written on his behalf by the Therapist. Individual's Ex. 7.

Tr. at 66. She testified that she believes that the Individual has “an excellent chance of remaining sober and in recovery,” that he is “very motivated,” and that he is “very insightful.” Tr. at 67. She testified that the Individual accepts that he has an alcohol disorder and intends to permanently abstain from using alcohol. Tr. at 72. She testified that the Individual’s recovery is going “very, very well, good, excellent.” Tr. at 71. She noted that the Individual is now “genuinely happy.” Tr. at 72.

The Individual testified on his own behalf at the hearing. He testified that the stress of his deteriorating marriage contributed to his Alcohol Dependence. Tr. at 77-78. He noted that his ADUI arrest was a turning point for him, because it forced him to address his problems. Tr. at 78. The Individual testified that shortly after his arrest, he decided to separate from his spouse and to seek assistance from the EAP and the IOP. Tr. at 78-79. He testified that he has not used alcohol since his May 28, 2016, arrest, and intends to permanently abstain from using alcohol. Tr. at 78-79, 81, 86, 95-96. The Individual testified that he is highly motivated to avoid future alcohol use, since he recognizes that he should not drink because he has an alcohol problem and that he cannot control his alcohol use. Tr. at 86, 97-98. The Individual testified that he attended a 20-week IOP for two hours per week.⁷ Tr. at 79. He had been attending one to two AA meetings each week, until January 1, 2017, when at the suggestion of the DOE Psychologist, he began attending three AA meetings each week. Tr. at 79-80. The Individual testified that he meets with the EAP Counselor every three to four weeks, in addition to meeting with the Therapist every two to three weeks. Tr. at 79. The Individual testified that he has also attended 12 hours of “DWI school,” a DWI victim’s panel, and 24 hours of community service. Tr. at 80. The Individual began attending a twelve week drug and alcohol education class on January 5, 2017. Tr. at 80. The Individual testified that his employer has been testing him for drug and alcohol use several times each week, and that none of these tests have detected alcohol or illegal drug use.⁸ Tr. at 79, 94. The Individual testified that sobriety has had a “huge” positive impact on his life, and has provided him with “mindfulness” and “clarity.” Tr. at 98. He testified that he is now “as happy as I’ve ever been.” Tr. at 99.

After DOE Psychologist observed the testimony of these witnesses, he testified that the Individual had resolved the concerns about the Individual’s judgment and reliability raised by the Individual’s Alcohol Dependence, and has concluded that the Individual has been reformed or rehabilitated from his Alcohol Dependence. He testified that when he conducted his examination of the Individual on October 20, 2016, he did not believe that the Individual had been sufficiently rehabilitated. Tr. at 104. The DOE Psychologist noted that, at that time, he had opined that the Individual needed to establish “nine months of documented sobriety” in order to show that he has been rehabilitated. Tr. at 104-105. He testified that he normally recommended a full year of sobriety for individuals with Alcohol Dependence, but he reduced his recommendation for the Individual because he “was impressed with the clarity of his honesty.” Tr. at 105. The DOE Psychologist further testified that he had formed an opinion that the Individual “was a man of high character, high morality, that he did, in fact, see and understand the nature of his alcohol issue and what kinds of things in the past that he had been struggling with that contributed to that.” Tr. at

⁷ The Individual has submitted a certificate of completion for the IOP. Individual’s Ex. 6.

⁸ The Individual corroborated this testimony by submitting Individual’s Ex. 4, which consists of the results of 82 alcohol tests administered to him by his employer from June 8, 2016, through February 28, 2017. Each of the 82 test result forms indicate that the Individual tested negative for alcohol or illegal drugs. Individual’s Ex. 4.

105. He noted that the Individual had increased his AA attendance from one to three times a week. Tr. at 105. The DOE Psychologist testified that the Individual's negative alcohol test results confirm that the Individual has been, and is able to, remain abstinent from alcohol. Tr. at 108. The DOE Psychologist testified that the Individual "has met all the criteria that I had proposed, and I have confidence that he will be able to sustain his abstinence not just for a year or two but probably much longer than that." Tr. at 111. He further testified that he sees no current defect in the Individual's judgment and reliability. Tr. at 111. The DOE Psychologist testified that the Individual's prognosis is "very good." Tr. at 113.

Guideline G sets forth four conditions which can mitigate security concerns arising from an individual's Alcohol Dependence. In the present case, the evidence discussed above establishes that the Individual has met three of these conditions. The Individual has acknowledged his Alcohol Dependence, has provided evidence of actions taken to overcome this problem (including his completion of the IOP, his participation in AA and aftercare, his seeking assistance from his EAP, and his participation in individual counseling) and has established a nine-month pattern of abstinence. Guideline G at ¶ 23(b). The 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. Guideline G at ¶ 23(c). As discussed above, the Individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations, such as participation in AA meetings and aftercare, and has received a favorable prognosis by the DOE Psychologist, his Therapist, his Substance Abuse Counselor, and his EAP Counselor. Guideline G at ¶ 23(d). Accordingly, I find that the Individual has resolved the security concerns, raised under Guideline G by his Alcohol Dependence.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated all of the security concerns raised under Guideline G. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored at this time. The Local Security Office may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: March 21, 2017