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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: February 3, 2017)

Case No.: PSH-17-0006

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Issued: June 2, 2017

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 should be granted a security clearance.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor who applied for a security clearance on his behalf. During the ensuing investigation, the local security office (LSO) learned that the individual had been cited in 2005 for underage drinking, and had failed to mention this citation on a 2013 Questionnaire for National Security Positions. Because this information raised security concerns, the LSO summoned the individual for an interview with a personnel security specialist in January 2014. Subsequent to this Personnel Security Interview (PSI), the LSO referred the individual to a local psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. Before this evaluation, however, the individual was arrested

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>.

for Driving Under the Influence (DUI) in March 2014. The DOE psychologist evaluated the individual in June 2015 and prepared a report for the LSO.

After reviewing this report and the individual's personnel security file as a whole, 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 11 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced five exhibits and presented the testimony of three 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 Guidelines G and I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (Adjudicative Guidelines).

Guideline G relates to alcohol consumption, and it provides that alcohol-related incidents such as driving while under the influence, habitual or binge consumption to the point of impaired judgment, and diagnoses by a medical professional of alcohol abuse or dependence are conditions that could raise a security concern and may be disqualifying. Guideline I, "Psychological Conditions," is implicated when a government-contracted mental health professional concludes that an individual suffers from a mental or emotional condition that can impair judgment, reliability, or trustworthiness. As circumstances raising security concerns under these Guidelines, the Notification Letter cites the DOE psychologist's diagnosis that the individual suffers from Alcohol-Related Disorder, Not Otherwise Specified, and his conclusion that this constitutes an illness or mental condition that causes, or could cause, a significant defect in the individual's judgment or reliability. The Notification Letter also cites the individual's 2005 citation for underage drinking, his statement during his PSI indicating that, at that time, he was drinking up to a case of beer per week, his 2014 DUI arrest, and his response to a 2015 Letter of Interrogatory, in which he indicated that he consumed five to seven beers at a local restaurant prior to this arrest.

These allegations adequately support the invocation of Guidelines G and I, and they raise serious security concerns. The excessive consumption of alcohol and emotional or mental conditions involving such consumption often lead to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines, ¶ 21 and ¶ 27.

III. REGULATORY STANDARDS

The procedures 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 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 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 Office of Security Affairs, 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 DOE psychologist’s diagnosis. Instead, he attempted to demonstrate, through his own testimony and that of his witnesses, that he no longer drinks to excess and that he is not currently suffering from any condition that causes, or could cause, a significant defect in his judgment or reliability.

The individual testified that his current rate of alcohol consumption is one to two beers “maybe once per month, if that.” Hearing Transcript (Tr.) at 43. The last time that he exceeded this amount, he continued, was during a going away celebration for a co-worker approximately four months before the hearing. The individual said that on that occasion, he consumed no more than three beers, and took a taxi home after the event. Tr. at 34, 43. He abstained completely from drinking for approximately four months after the evaluation, he said, and then began adhering to the DOE psychologist’s recommendation of no more than four drinks on any one occasion, and no more than 14 drinks during any given week. Tr. at 32, 35. The individual went on to say that the last time that he consumed alcohol was “several weeks ago,” when he had one beer with dinner, and “didn’t even finish it.” Tr. at 33. He claims to have had no further alcohol-related legal problems since his 2014 DUI, and to have refrained from drinking to intoxication since his evaluation by the

DOE psychologist. Tr. at 35, 37. The individual did not seek counseling after this evaluation, he continued, because he believed that he could “self-control,” and he was able to do so. *Id.* His family has not expressed any concerns to him about his drinking, the individual said, and he does not keep any alcohol in his house. Tr. at 35-36. He now believes that his previous level of alcohol consumption was “risky” and a proper source of “concern,” and he testified that he has no plans to increase his current level of drinking. Tr. at 36-37.

The individual’s friend testified that he talks with the individual almost daily and socializes with him “every couple of weeks.” Tr. at 21. The most alcohol that he has seen the individual consume on any of these occasions is “two or three drinks.” Tr. at 24. The friend stated that he has no concerns about the individual’s level of consumption, and that the last time that he saw the individual when he appeared to be intoxicated was when they were in college, approximately eight years ago. Tr. at 25. The individual’s supervisor and co-worker both testified that the individual is a skilled and productive worker who has not exhibited any signs of an alcohol use problem on the job. Tr. at 10-11; 16-17.

B. Administrative Judge’s Decision

The evidence in this case demonstrates that the individual has very significantly reduced his level of alcohol consumption since his 2014 DUI, from as many as 24 beers per week to one to two beers perhaps once per month, with a maximum of three beers on any single occasion. For this reason, and because of the testimony at the hearing, I find that the individual has successfully addressed the DOE’s concerns about his alcohol usage. In making this determination, I found the testimony of the DOE psychologist to be particularly significant.

The psychologist testified that the individual “has certainly met the recommendations that I provided in my report.” Tr. at 45. In that report, he opined that the individual was consuming alcohol habitually to excess, and after hearing all of the testimony, he concluded that the individual “had reduced that,” and had “abstained for a period of about four months,” which was one of the “recommended routes that he could take to demonstrate reformation or rehabilitation.” Tr. at 45-46. While he noted that the individual has resumed drinking to a limited extent, the DOE psychiatrist observed that the consumption “appears to be well within the bounds of moderate” use. Tr. at 46. While he would have preferred that the individual seek professional counseling, the DOE psychologist said that it was not essential in the individual’s case, “because he has demonstrated, through his actions, some abstinence and a commitment to reduce consumption.” *Id.* The DOE psychologist concluded that the individual had demonstrated adequate evidence of reformation from his alcohol use disorder, and that he was not currently suffering from any illness or mental condition that was causing, or could cause, any significant defect in his judgment or reliability. Tr. at 47.

V. CONCLUSION

For the reasons set forth above, I find that the individual has resolved the DOE's security concerns under Guidelines G and I. Consequently, I conclude that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. I therefore find that the DOE should grant the individual a 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: June 2, 2017