

*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: February 22, 2017) Case No.: PSH-17-0010
)
)
_____)

Issued: May 25, 2017

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“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 contractor with the DOE 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 Suspicion of Driving Under the Influence of Alcohol (DUI). In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in August 2016. Following the interview, the LSO sent the Individual for an evaluation with a DOE consulting psychologist (DOE psychologist).

On December 21, 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. 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 eleven exhibits (DOE Exs. 1-11) into the record

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.

and presented the testimony of a DOE psychologist. The Individual presented his own testimony and the testimony of his wife, his brother, and one co-worker. The Individual also submitted six exhibits (Ind. Exs. A-F). *See* Transcript of Hearing, Case No. PSH-17-0010 (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”).

III. Notification Letter and Associated Security Concerns

As previously noted, 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 *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005) (Adjudicative Guidelines). Under Guideline G, the LSO alleges that the Individual consumed alcohol excessively, which could 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, 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, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent” and “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Adjudicative Guidelines, Guideline G, at ¶ 22 (a) and (c). DOE Ex. 1; *see* DOE Ex. 6; DOE Ex. 7; DOE Ex. 8.

IV. Hearing Testimony and Evidence

In July 2016, the Individual was arrested and charged with DUI. DOE Ex. 1; DOE Ex. 6; DOE Ex. 7; DOE Ex. 8 at 8, 9; DOE Ex. 10 at 13, 17-47, 75, 87. At the hearing, the Individual testified that prior to the arrest he consumed six to eight beers between the hours of approximately 3 p.m. and 9 p.m. Tr. at 8. His wife and brother confirmed his recollection. Tr. at 14, 24. His wife testified that he was very upset by the arrest, and he has completely changed his drinking habits since then. Tr. at 14, 17. His brother testified that the Individual was shocked and disappointed by his arrest. Tr. at 24. He also stated that the Individual has changed his alcohol consumption since the arrest. Tr. at 25. The Individual, his wife, and his brother all testified that prior to July 2016, he would consume alcohol only on weekends, while he was renovating his home. Tr. at 13, 22, 53.

The Individual testified that he has attended eleven of twelve group therapy sessions, with his last session scheduled to be the Wednesday after the hearing. Tr. at 46-47. He also testified that he is attending Alcoholics Anonymous (AA) online. Tr. at 52. His wife stated that he accesses the online AA at the kitchen table. Tr. at 16. Occasionally, she will look over his shoulder to see what he is doing. Tr. at 16. The Individual stated that he started going to individual counseling prior to receiving the DOE psychologist's report; when he read the report, he changed from individual counseling to the group therapy sessions suggested by the DOE psychologist. Tr. at 49.

The Individual has been open with his family and co-worker regarding his DUI arrest and current abstinence. Although the Individual's wife, brother, and supervisor all testified that his goal is to be abstinent for one year, the Individual and his wife both stated that he does not intend to consume alcohol again. Tr. at 15, 18, 27, 43, 56. The DOE psychologist stated that it would be possible for the Individual to drink socially in the future. Tr. at 78. The supervisor testified that, "[h]e's always been forthright and honest with me in his personal and business dealings, and especially in this situation, he has been very -- very good at keeping me filled in on what's going on." Tr. at 41. The supervisor also testified that "I don't really see a change in his work ethic or how he went about doing his work. If I would say I saw a change in [the Individual], I would say it would be in his attitude. I think he has a better attitude than he did at that time." Tr. at 44-45.

The Individual's wife testified that she would know if the Individual started consuming alcohol again, because they are "always together." Tr. at 18. Both the Individual and his brother testified that he has a great support system. Tr. at 34, 62. The Individual added that his supervisor is a recovering alcoholic. Tr. at 63. He stated that they have had discussions about the Individual's alcohol consumption and abstinence. Tr. at 63. He continued that his wife has been very supportive. Tr. at 62. When questioned, the Individual stated that he knows the "triggers" that would end his abstinence. He testified that most of past triggers have been eliminated from his life. Tr. at 64. Both he and his wife testified that there is alcohol in the house that they are currently residing in, because they live with her cousin and he has some beer in the refrigerator. Tr. at 17, 68-69. All of the Individual's witnesses testified that he has not consumed any alcohol since his arrest. Tr. at 17, 25, 43, 54.

After his PSI in January 2016, the Individual was evaluated by a DOE psychologist. DOE Ex. 8. Following the evaluation, the DOE psychologist opined that the Individual had been a user of alcohol habitually to excess. DOE Ex. 8 at 8. He continued that there was not adequate evidence of rehabilitation or reformation. DOE Ex. 8 at 8. At the hearing, held six months after the DOE psychologist's evaluation, he opined that he was persuaded by the Individual's abstinence, and

confident that he would not be triggered to consume alcohol in the future. Tr. at 75. The DOE psychologist cited the Individual's accomplishment of the steps recommended to show rehabilitation or reformation, and he noted that those steps were started prior to receiving the recommendations. Tr. at 76. The DOE psychologist testified that the Individual's prognosis is good and his risk of relapse is in the low range. Tr. at 78, 80. He concluded that the Individual has made an excellent effort, understands his triggers, and is taking his abstinence seriously. Tr. at 79-80. When asked about the effectiveness of the online AA sessions, the DOE psychologist stated that he suggested them to the Individual and gave him some links to various sessions. Tr. at 80.

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 Guideline G, based on the opinion by the DOE psychologist that the Individual was consuming alcohol habitually to excess, and his July 2016 DUI. 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. Adjudicative Guidelines, ¶ 21. Alcohol-related incidents such as driving while under the influence, along with habitually consuming alcohol, raise a security concern. Adjudicative Guidelines, ¶ 22 (a), (c).

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 Guideline G security concern, including:

(b) the individual acknowledges his . . . alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence

(c) 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;

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines, ¶ 23 (b)-(d).

Given the above factors, I find that the Individual has resolved the security concerns raised by the LSO. The Individual has acknowledged his previous issues with alcohol; he is attending AA and group therapy sessions; the Individual has been abstinent since his DUI arrest; and the DOE psychologist expressed the opinion that the Individual is making good progress. All these factors satisfy ¶¶ 23 (b), (c) above.

Finally, the DOE psychologist opined at the hearing that the Individual no longer uses alcohol habitually to excess and that he has a low risk of relapse. The DOE psychologist based his testimony on the Individual's demeanor at the hearing; the testimony of his witnesses; his participation in treatment; and his sincerity in his abstinence. Tr. at 75-76. The DOE psychologist's testimony satisfies ¶ 23 (d).

Based on the foregoing, I find that the Individual has resolved the security concerns raised by the DOE psychologist's opinion that the Individual was a user of alcohol habitually to excess, and his DUI.

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 Guideline G. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of 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 that guideline. 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: May 25, 2017