

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

In the Matter of: Personnel Security Hearing)

Filing Date: July 17, 2017)

Case No.: PSH-17-0045

Issued: October 6, 2017

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 granted.²

I. BACKGROUND

On September 21, 2015, the Individual submitted a Questionnaire for National Security Positions (QNSP) to the Local Security Office (LSO), in which he reported that he had used hallucinogenic mushrooms while holding a DOE security clearance. The Individual had failed to report his use of hallucinogenic mushrooms on six QNSPs. Because this information raised concerns regarding the Individual’s eligibility to hold a security clearance, the LSO conducted a Personnel Security Interview (PSI) of the Individual on April 18, 2017. The PSI did not resolve the security concerns raised by the Individual’s hallucinogenic mushroom use and failure to report that on six QNSPs. Accordingly, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, dated June 5, 2017, 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 July 18, 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 first and second level supervisors, a former coworker, his Alcoholics Anonymous (AA) sponsor (the Sponsor), his certified peer support worker (the CPSW), and a fellow AA member. *See* Transcript of Hearing,

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>.

Case No. PSH-17-0045 (hereinafter cited as “Tr.”). The LSO submitted eleven exhibits, marked as DOE Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted no exhibits.

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 E of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005) (the Guidelines). Guideline E provides: “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 or sensitive information.” Guideline E at § 15.

The LSO alleges that the Individual failed to report his hallucinogenic mushroom use on six QNSPs that he filed on November 22, 2006, November 1, 2007, November 7, 2008, October 7, 2009, November 3, 2009, and November 4, 2010, in which he reported that he had not engaged in illegal drug use during the previous seven years or while possessing a DOE security clearance. In addition the LSO alleges that the Individual failed to report his 1990 marijuana use on a QNSP that he submitted on June 21, 1995. Guideline E provides that “any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes” is “of special interest.” Guideline E at § 15. The Individual’s repeated failures to report his illegal drug use adequately justify the LSO’s invocation of Guideline E.

The LSO further alleges, under Guideline E, that the Individual used hallucinogenic mushrooms while maintaining a DOE security clearance. Use of an illegal drug while maintaining a security clearance exhibits an unwillingness or inability to comply with rules and regulations which can in turn raise questions about that individual’s judgment, reliability, trustworthiness, and ability to protect classified information. Guideline E at § 15. The Individual’s admission that he used hallucinogenic mushrooms on four occasions while holding a security clearance adequately justifies the LSO’s invocation of Guideline E.

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

The Individual maintained a DOE security clearance from September 1995, until December 2013, when it was revoked as a result of his Alcohol Dependence. Ex. 4 at 34, 36; Ex. 11 at 11-12, 147.

On June 21, 2014, the Individual requested reconsideration of his clearance status. Ex. 11 at 17. On August 8, 2015, the LSO approved his request for a reconsideration. Ex. 11 at 17. On December 14, 2016, the Individual submitted a QNSP to the LSO. In this QNSP, the Individual admitted that he had used hallucinogenic mushrooms while he had maintained a DOE security clearance on four occasions between 2006 and 2009. Ex. 4 at 32. The Individual submitted six QNSPs on November 22, 2006, November 1, 2007, November 7, 2008, October 7, 2009, November 3, 2009, and November 4, 2010, in which he reported that he had not engaged in illegal drug use during the previous seven years or while possessing a DOE security clearance. On June 21, 1995, the Individual submitted a QNSP in which he reported that he had not engaged in illegal drug use during the previous seven years or while possessing a DOE security clearance. The Individual subsequently admitted that he had used marijuana in the fall of 1990. Ex. 11 at 120.

On April 18, 2017, the LSO conducted a PSI of the Individual. During this PSI, the Individual acknowledged that he had consumed hallucinogenic mushrooms while maintaining a DOE security clearance on four occasions during the period beginning in September 2006 and ending in June 2009. Ex. 11 at 114, 135, 160, 189. The Individual also reported that he had used marijuana in 1990. Ex. 11 at 120, 147-48. The Individual stated that he had no intent to use illegal drugs in the future and that he had no association with illegal drug users and no intent to do so in the future. Ex. 11 at 152-154. The Individual indicated that he had reported his hallucinogenic mushroom use because he believes that it is important for him to be honest. Ex. 11 at 162. He attributed his need to be honest to his becoming sober, and the importance of honesty to his AA treatment program. Ex. 11 at 163, 186, 215. The Individual indicated that he did not previously disclose his illegal drug use and omitted his illegal drug use from seven QNSPs because he was concerned about losing his job and security clearance, and that he was trying to conceal his alcohol problem. Ex. 11 at 174-177, 189, 208-213, 218-220, 224. The Individual stated that his alcohol problem contributed to the poor judgment that led him to conceal his illegal drug use. Ex. 11 at 174. The Individual also admitted he failed to report his 1990 marijuana use on his June 21, 1995, QNSP, because he did not want to lose his opportunity to obtain a security clearance. Ex. 11 at 199-202.

V. ANALYSIS

At the hearing, the Individual presented testimony of his first and second level supervisors, a former coworker, the Sponsor, his CPSW, and a fellow AA member, to successfully show that he is now striving to be person of integrity and to maintain his sobriety. This testimony has convinced me that the Individual has realized that his integrity and honesty are vital to his continuing sobriety. The record further shows that, through his AA program and counseling, the Individual has developed the judgment, reliability and trustworthiness necessary to maintain a DOE security clearance.

The Sponsor testified on the Individual's behalf at the hearing. The Sponsor testified that "honesty is everything in Alcoholics Anonymous," and that sobriety cannot be obtained or maintained without honesty, according to AA doctrine. Tr. at 35. The Sponsor testified that the Individual has taken the AA's teachings concerning the importance of honesty to heart. Tr. at 36. The Sponsor testified that the Individual had asked him whether he should disclose his previous use of hallucinogenic mushrooms to the DOE, and that he had advised the Individual to make the disclosure. Tr. at 36. The Sponsor testified that he had advised the Individual that he had to put his sobriety first, which requires honesty. Tr. at 36-37. The Sponsor testified that the Individual is now honest, because he recognizes its importance. Tr. at 39.

The CPSW testified at the hearing on the Individual's behalf. She testified that "A certified peer support worker is somebody that has been trained . . . to work with alcoholics and recovering addicts, to help support them in getting back into . . . the workforce or being more productive." Tr. at 41. She testified that she was meeting with the Individual in order to help him maintain his sobriety and improve his relationships. Tr. at 42. The CPSW testified about the importance of integrity and honesty in maintaining sobriety. Tr. at 42-43. She testified that the Individual has learned to be self-aware and honest as part of his recovery. Tr. at 43. The CPSW testified that the Individual had talked with her, at an AA meeting, before deciding to disclose his hallucinogenic mushroom use to DOE. Tr. at 44, 49.

A fellow AA member testified on the Individual's behalf at the hearing. The fellow AA member testified that he had formed a friendship with the Individual. Tr. at 52-53. The Individual testified about how he had observed the Individual make progress with his sobriety. Tr. at 56-57. The fellow AA member testified that AA teaches that no progress can be made without honesty. Tr. at 57-58. The fellow AA member testified that he has observed the Individual's commitment to honesty. Tr. at 58-59.

The Individual testified on his own behalf at the hearing. The Individual testified that his problem with alcohol led to his November 2012 arrest for Driving While Intoxicated, which in turn led to him losing his DOE security clearance. Tr. at 65-67. The Individual testified that he disclosed his illegal drug use because he found it comforting to know he was "doing the right thing." Tr. at 69. He further testified that he had made the disclosure after talking with his previous sponsor (who has since passed away). Tr. at 69. The Individual testified that he realized that disclosing his illegal drug use would also reveal his previous failures to report his illegal drug use. Tr. at 71-73. He testified that he was more afraid of losing his sobriety than of not obtaining his security clearance. Tr. at 72. The Individual also spoke of his need to rebuild his trustworthiness which began on his sobriety date in January 2013. Tr. at 74. The Individual testified that he saw his past deceitfulness as a symptom of his alcoholism. Tr. at 75-76. The Individual testified that he does not regret

disclosing his past illegal drug use and sees his disclosure as an “opportunity to clean up my past and to clear the record.” Tr. at 79.

The Individual’s repeated falsifications on his QNSPs violated DOE security policies and unambiguously exhibited that he lacked the trustworthiness, reliability, and judgment necessary to maintain a DOE security clearance. Moreover, the Individual’s repeated use of an illegal drug while maintaining a security clearance, and while he was aware that illegal drug use violated both the law and DOE security policies, raised further questions about his judgment, reliability, and trustworthiness as well as his willingness to comply with rules and regulations. Guideline E at § 16(d)(3). However, the Individual’s last falsification occurred on November 4, 2010, six years and ten months prior to his hearing. During that period, the Individual has made important changes in his life: discontinuing the use of alcohol, acknowledging his alcoholism, actively participating in AA, maintaining his sobriety since January 2013, and obtaining counseling.

Guideline E sets forth six conditions which may mitigate security concerns arising under that Guideline, three of which are relevant to the present case. Specifically, Guideline E provides that security concerns can be mitigated when “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Guideline E at § 17(a). In the present case the Individual has clearly made good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. While the Individual’s past falsifications occurred years before he disclosed them to DOE, he promptly disclosed his falsifications when he reapplied for his security clearance.

Guideline E further provides that security concerns can be mitigated when “the individual has acknowledged the behavior and obtained counseling to change the behavior *or* taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” Guideline E at § 17(d) (emphasis added). As discussed above, the Individual has acknowledged the behavior, has changed his behavior and has taken positive steps, in the form of immersing himself in the AA program and obtaining counseling to alleviate the stressors, circumstances, or factors (specifically his Alcohol Dependence) that caused his untrustworthy, unreliable, or other inappropriate behavior, and I am convinced such behavior is unlikely to recur.

Guideline E further provides that security concerns can be mitigated when “. . . so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” Guideline E at § 17(c). As discussed above, the Individual’s last falsification occurred on November 4, 2010, six years and 10 months before this hearing, and the Individual has now demonstrated reliability, trustworthiness, and good judgment by disclosing his past illegal drug use and falsifications.

Moreover, I find that the Individual’s self-reporting of his past illegal drug use and falsifications, participation in the AA program, achievement of sobriety, participation in counseling, and subsequent conduct during the present proceeding, shows that his judgment, reliability, and trustworthiness have improved greatly since November 2010 and now suffices to allow him to maintain a DOE security clearance. Accordingly, I find that the security concerns raised under Guideline E have been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the security concerns raised under Guideline E. Accordingly, the Individual has demonstrated that granting 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 granted 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: October 6, 2017