

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
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Filing Date: August 14, 2017)
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Case No.: PSH-17-0053

Issued: November 13, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to obtain an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the individual should be granted an access authorization.

I. Background

The individual is employed by a DOE contractor. His employer submitted a request that the individual be granted a DOE security clearance. In reviewing this request, the Local Security Office (LSO) received potentially derogatory information regarding the individual’s alcohol use. In order to address those concerns, the LSO summoned the individual for a personnel security interview (PSI) in March 2016. Following the PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychologist (DOE psychologist).

On June 14, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to be granted an access authorization. In an attachment to the Notification Letter, the LSO explained

¹ Access authorization is defined as “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 be referred to variously in this Decision as access authorization or security clearance.

that the derogatory information fell within the purview of Guideline G (alcohol consumption) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual testified on his own behalf. The DOE Counsel presented the testimony of the DOE psychologist. The DOE submitted nine exhibits (Exhibits 1-9) into the record, and the individual tendered fifteen exhibits (Exhibits A-O). The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his 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). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines, which relates to security risks arising from alcohol consumption. Excessive alcohol consumption often leads to the exercise

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. See Guideline G at ¶ 21.

In citing Guideline G, the LSO in the Notification Letter stated that it was relying upon a May 23, 2016, report (Report) issued by the DOE psychologist regarding the individual. In the Report, the DOE psychologist concluded that the individual met the diagnostic criteria for Alcohol Dependence, in Sustained Partial Remission, as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*. The Report also concluded that the individual had not demonstrated adequate evidence of rehabilitation or reformation. Additionally, the LSO alleged in the Notification Letter that the individual had been arrested for three alcohol-related offenses – once for Misdemeanor Driving Under the Influence (DUI) and twice for Disorderly Intoxication (DI). The LSO also cited the individual's admissions in the PSI that, as of the date of the PSI, he would consume an 18-pack of beer and approximately 10-15 shots of alcohol per month. Given the information available to the LSO, I conclude that the LSO had adequate grounds to invoke Guideline G.

IV. Findings of Facts

Pursuant to his employer's request that he be granted a security clearance, the individual completed a Questionnaire for National Security Positions (QNSP) in September 2015. Ex. 7. On the QNSP, the individual admitted to having been arrested three times during the period 2011 through 2012, once for Driving Under the Influence (DUI) and twice for Disorderly Intoxication (DI). Ex. 7 at 19-20.³ *Id.* At the PSI, the individual reported that, prior to his January 2011 DUI arrest, he had consumed a significant amount of alcohol at a local pool hall. Ex. 8 at 7. He further reported that, prior to his October 2011 DI arrest, he had consumed approximately 4 to 6 beers and 10 shots of alcohol. Ex. 8 at 8-9. He also reported that he consumed approximately 4 to 6 beers and 10 shots of alcohol prior to his December 2011 DI arrest. Ex. 7 at 8-9.

In May 2016, the DOE psychologist performed a forensic psychological examination of the individual and subsequently issued her Report. Ex. 10 at 1. In her Report, the DOE psychologist summarized her findings regarding the individual's history of alcohol use, his arrests, and the results of several psychometric tests administered to the individual. The DOE psychologist concluded that from the individual's late teens through his early-to-mid-twenties, the individual consumed alcohol to excess and met the Diagnostic and Statistical Manual, 4th Edition Text Revision's criteria for a diagnosis of Alcohol Dependence in Sustained Partial Remission.⁴ Ex. 10 at 12. The DOE psychologist also determined that, as of the date of her examination, the individual had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 10 at 10. For the individual to demonstrate adequate evidence of rehabilitation, the individual should abstain from alcohol use for a period of 12 months and engage in counseling with a therapist. The DOE psychologist also recommended that the counseling should include alcohol use education with an emphasis on relapse prevention. Ex. 10 at 14.

³ The Notification Letter states that the three arrests occurred in January 2011, October 2011, and December 2011 which varied from the dates of arrests the individual reported in the PSI. Ex. 3 at 4; see Ex. 9 at 73-81.

⁴ The DOE psychologist also opined that under the more recent Diagnostic and Statistical Manual, 5th edition, the individual could be diagnosed as suffering from Alcohol Use Disorder. Ex. 10 at 12.

V. 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 should be granted a security clearance. In this regard, I find that granting a security clearance to the individual would not endanger the common defense and security, and would be 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.

At the hearing, the individual admitted that he had a problem with his alcohol consumption. Tr. at 34-35. He testified that after receiving the Notification Letter and speaking to a LSO official he decided to stop consuming alcohol. Tr. at 26. His last alcohol consumption was on July 19, 2016. Tr. at 21; Exhibit A. at 1. He later consulted a substance abuse counselor (Counselor) who advised him that, in addition to abstaining from alcohol, he should enter into a relapse prevention course. Tr. at 25. The individual successfully completed the 15-session relapse prevention course in May 2017. Tr. at 26; Ex. A at 7. The course helped the individual to realize that one of the triggers for his alcohol use was a feeling of being "left out." Tr. at 40.

The individual also testified that he has significantly changed his lifestyle. The individual has earned two Associate Degrees in college and is participating in an on-line Bachelor of Science degree program. Ex. A at 23-37. As part of his commitment to be abstinent, he no longer associates with friends with whom he consumed alcohol. Tr. at 28-29. While his fiancé does consume alcoholic beverages at social occasions, they do not keep any alcohol in their residence. Tr. at 24. Additionally, the individual now exercises in the local YMCA after work. Tr. at 39.

The individual submitted a written statement from his fiancé in which she states that the individual has made significant changes in his life since his examination by the DOE psychologist.⁵ Ex. B at 1. She affirmed that the individual has not consumed alcohol for approximately a year, and as a result he has been more focused on things to improve their life together such as saving money and improving his skills to build a better future. Ex. B at 1. She believes that the individual is "honest, caring . . . and motivated." Ex. B at 1. The individual also submitted written statements from two of his supervisors attesting to the high quality of his job performance and his unique ability to work with other employees. Ex. A.

The individual entered into the record a report from his Counselor. Ex. A at 6. In her report, the Counselor states that the individual has provided "well thought out responses" and has shown "increased awareness of addiction issues. Ex. A. at 6. Further, over the past year, the Counselor has observed a more focused and settled mindset. Ex. A at 6. The Counselor found that the individual has developed a greater awareness of "how important decisions made today can impact tomorrow's lifestyle." Ex. A. at 6.

⁵ The individual's fiancé was not able to testify personally because of her employment at a hospital. Tr. at 51.

At the hearing the DOE psychologist listened to all of the testimony and had the opportunity to question the individual. The DOE psychologist also reviewed all of the exhibits submitted by the individual. After this review, the DOE psychologist opined that the individual was now rehabilitated from his alcohol use disorder. Tr. at 62. In making this determination the DOE psychologist found that the individual is “a person of great integrity interpersonally, professionally, financially, personally” Tr. at 62. She also testified as to her opinion that the individual is “highly motivated, not just in his professional life and the ways that he approaches things outside of his professional life, but he is very motivated regarding his recovery.” Tr. at 62. The DOE psychologist noted that the individual accepted that he had an alcohol problem even before the date she first examined him. Tr. at 62. She also testified that the individual’s exhibits regarding his education and relapse prevention course were “impressive.” Tr. at 62-63. In conclusion, the DOE psychologist testified that the individual’s counseling sessions with his Counselor and his participation in the relapse prevention classes substantially met her Report’s treatment recommendations. Tr. at 64-66.

After reviewing the record before me, I find that the individual has resolved the security concerns arising from the Criterion G derogatory information recorded in the Notification Letter. The individual credibly testified as to his acceptance of his alcohol problem. Further, the individual has provided convincing documentary evidence as to his efforts to change his lifestyle through his pursuit of college degrees and his efforts at receiving counseling for his problem. The individual has submitted documentary evidence attesting to his successful completion of the relapse prevention course. Significantly I found the DOE psychologist’s opinion as to the state of the individual’s rehabilitation to be well-founded and based upon significant evidence. I thus find that the following Adjudicative Guideline Criterion G mitigating factors are applicable in the present case: ¶ 23(b) - the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and ¶ 23(c) - the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program. Adjudicative Guidelines, Criterion G, ¶ 23.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline G. 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 find that the individual has brought forth sufficient evidence to resolve the security concerns associated with that guideline. I therefore find that granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should grant the individual an access authorization.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals
Date: November 13, 2017