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July 27, 2011

DECISION AND ORDER

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 2, 2011

Case Number: TSO-1001

This Decision concerns the continued eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an 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." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be restored.¹

I. Background

The individual is employed by a Department of Energy (DOE) contractor and has held a security clearance at the request of his employer since 2008. In August 2010, the individual tested positive for alcohol during an employment-related screening. He admitted consuming 10-12 beers the night before the test. The local security office (LSO) conducted a personnel security interview (PSI) with the individual in October 2010, wherein he admitted consuming at least one six-pack of beer nightly for the previous four years. The PSI did not resolve the security concerns regarding his alcohol use and the individual agreed to be evaluated by a DOE consultant-psychiatrist. In November 2010, a DOE consultant-psychiatrist (DOE psychiatrist) interviewed the individual and concluded that the individual met the criteria for alcohol dependence in early remission without adequate evidence of rehabilitation or reformation. He also concluded that alcohol dependence is an illness which causes or may cause a significant defect in his judgment or reliability. The LSO suspended the individual's access authorization and then informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (December 2010). The Notification

¹ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J).²

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing the individual, who was represented by counsel, testified on his own behalf and also called six witnesses. DOE counsel called the DOE psychiatrist as a witness. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the parties during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." DOE exhibits are numbered, and the individual's exhibits are lettered.

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of 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).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. 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): 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 the 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 continuance or recurrence; and other relevant and material factors. After due deliberation, I find that the individual's access authorization should be restored because I conclude that such a restoration would not

² Criterion H concerns information in the possession of the agency that the individual has an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability. 10 C.F.R. 710.8 § (h). Criterion J concerns information in the possession of the agency that an individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as suffering from alcohol abuse or dependence. 10 C.F.R. 710.8 § (j).

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 determination are discussed below.

A. Findings of Fact

The individual first consumed alcohol in his early twenties, and drank one six-pack per week. PSI at 19. In 1991, at the age of 23, he married his first wife. Ex. 10 at 149. He did not drink while he was married because his wife had children. PSI at 22. In 1997 and 1998, the individual drank one twelve-pack per night to fight pain and depression from the marital problems that had developed. PSI at 22-24. The couple divorced in 1998. *Id.* In 1999, he married his second wife and stopped drinking alcohol. The couple had a child in 2000. Ex. 10 at 147. He continued to abstain until 2005. PSI at 22-26. However, he then began to drink one six-pack of beer per night. PSI at 22-26. In 2006, he was hired by his current employer, but later that year he and his wife separated. Ex. 10. at 135. He began drinking one twelve-pack of beer a night to fight depression from his divorce and pain from previous injuries. *Id.* at 27, 34.

In 2008, DOE granted the individual a security clearance at the request of his employer. Ex. 3. In 2010, as a condition of his employment, the individual was asked to submit to an alcohol test. On the evening of August 29, 2010, the individual drove his son to the home of his ex-wife, and returned home and began drinking beer. On August 30, 2010, the individual registered .041 on the alcohol test, over the acceptable threshold measurement of .02. Ex. 8. On August 31, 2010, the individual was referred for mandatory alcohol-related evaluation at the site occupational health service, which then referred him to a local eight-week intensive outpatient (IOP) treatment. He started the treatment on September 1, 2010. Ex. 7 at 1.

On October 4, 2010, the LSO conducted a PSI with the individual and the individual agreed to a psychiatric evaluation. The individual successfully completed his IOP in November 2010, and began to see a counselor that month. He also began to attend Alcoholics Anonymous (AA). In November 2010, a DOE psychiatric evaluation concluded that the individual suffered from alcohol dependence, without adequate evidence of rehabilitation or reformation, an illness or mental condition which causes or may cause a significant defect in his judgment or reliability. Ex. 6.

B. DOE's Security Concern

Criterion H states that derogatory information includes information that the individual has an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability. 10 C.F.R. § 710.8 (h). A DOE psychiatrist concluded that the individual suffers from such an illness—namely, alcohol dependence. This is a concern because it can impair an individual's judgment, reliability, or trustworthiness. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Assistant to the President for National Security Affairs (December 29, 2005) (Guidelines), Guideline I, ¶ 27. Therefore, I find that this criterion was properly invoked. Alcohol dependence is also a security concern

under Criterion J because it can lead to the exercise of questionable judgment. See Guideline G, ¶ 21. Based on the diagnosis of the DOE psychiatrist, I further find that the individual is suffering from alcohol dependence, and, therefore, the charge under Criterion J is also valid.

C. Hearing Testimony

1. Character Witnesses

The individual called his colleague, his sponsor, his girlfriend, and a neighbor as character witnesses. They all described the individual as a reliable hard-working person who was very serious about his recovery. None of the witnesses had seen the individual drink alcohol since one week prior to entering the IOP. Tr. at 116. The individual's colleague who testified was also a recovering alcoholic who facilitated an aftercare meeting, and had met the individual there. The individual regularly attended the meeting facilitated by his colleague. The colleague testified that the individual was very sincere in his comments and recovery, had a positive attitude, and was very conscientious. *Id.* at 91-109. The individual's sponsor testified that he had known the individual through work for a long time when the individual asked him to be his sponsor. They talk at work and on the phone, and he also considers the individual to have a very positive attitude. *Id.* at 175-180. The individual has told the sponsor that he intends to abstain for the rest of his life and that he does not miss drinking alcohol. *Id.* at 185-191.

The individual's girlfriend has lived with him for almost four years. Tr. at 110-112. Early in their relationship, she saw him abuse alcohol but she has not seen him drink alcohol since August 2010. *Id.* at 110-113, 116. She added that he does not constantly talk about alcohol nor has he ever stated that he misses drinking alcohol. She has seen the individual continue to enjoy life and maintain his abstinence, even when experiencing stress such as her bout with a serious illness and preparations for the hearing. *Id.* at 123-125; 153. He is very open with friends and co-workers about attending AA and he respects his sponsor. *Id.* at 133-136. He enjoys attending AA and sometimes attends AA daily. *Id.*

The neighbor, also a recovering alcoholic, testified that the individual really enjoys his AA meetings, and seems to be very committed to recovery. According to the neighbor, the individual is not only active at AA but is also very well-regarded and popular there. *Id.* at 60-169.

2. The Individual's Counselor

The counselor, a licensed clinical social worker, testified that she has treated the individual since November 2010, when he was referred to her upon completion of his IOP. Tr. at 22. She first met him in 2006 through the Employee Assistance Program (EAP) when he saw her for problems with his second divorce. *Id.* at 24. Their focus then was family issues, but this time he admitted that he was a heavy drinker. *Id.* at 24. He has very high expectations of himself, and tests administered at his treatment program corroborated this. He successfully completed his aftercare and 90 AA meetings in 90 days. The counselor concluded that the individual is now more open about his problems and that he has learned how to curb his tendency to be a workaholic so that it does not have a negative impact on

his recovery. He previously felt guilty about taking time off, but now has learned to balance his work and personal life. The counselor testified that the individual has a “sobriety-centered value system” and a relapse prevention strategy. In addition, he has a strong support system with his girlfriend and sponsor as the foundation. Therefore, she concluded that his prognosis is good, and he is in early full remission from the diagnosis of alcohol dependence. *Id.* at 41, 54. Further, he is very likely to obtain full sustained remission according to the DSM-IV when he achieves 12 months of sobriety. *Id.* at 49-50.

3. The Individual

The individual testified that he has been abstinent since August 31, 2010, and that as a result of his treatment program, he now has a commitment to lifelong sobriety. *Id.* at 209, 230-233. He explained that he did not think he was an alcoholic, but the IOP made him recognize the problems in his life and the negative impact of his excessive drinking. *Id.* at 210. He enrolled in the program in September 2010, and found it very stressful, but now finds the aftercare meetings enjoyable and has even chaired a meeting. He feels much better physically, and his relationships with others are more pleasant and satisfying. He has learned how to find a balance between work and his personal life that was lacking prior to his treatment. The program has given him the tools to help him in situations that would have caused him to drink in the past. After completing the eight-week IOP, he began attending AA two to three times per week, and continues to do so. He also attends aftercare meetings run by the treatment program. *Id.* at 223. He calls his sponsor regularly and also meets monthly with his counselor. He also works on issues regarding his ex-wife with his counselor. *Id.* at 243. He attributes his newfound sobriety to keeping him calm and preventing him from doing something he may regret in response to a personal crisis. *Id.* at 241.

4. The Site Psychologist

The site psychologist met with the individual after he tested positive for alcohol, and noted that the individual was in denial about the amount of his drinking. *Id.* He currently sees the individual for 15- to 30-minute sessions and discusses his attendance at meetings and his recent activities. His purpose is to monitor the individual’s fitness for duty and facilitate intervention, if needed. *Id.* at 71. He has not detected any negative issues in the individual’s recovery. *Id.* at 89.

5. The DOE Psychiatrist

The DOE psychiatrist was present during the entire hearing. At the time of his evaluation in November 2010, he recommended one year of treatment and sobriety, and found that the individual had a medium risk of relapse. Even at that time he found the individual very honest, open, and cooperative. *Id.* at 124. However, as of the date of the hearing, he concluded that the individual, at eight months of sobriety, has now shown adequate evidence of rehabilitation and is in early remission. *Id.* at 260. During his testimony, the psychiatrist explained that he was persuaded by his perception that the individual truly appreciates his sobriety. *Id.* at 256. The psychiatrist never sensed that the individual had any regrets about not being able to drink alcohol. He described the individual as the “ideal

patient”--very eager to soak up the knowledge and information that the psychiatrist offered. *Id.* at 256. The psychiatrist testified that he has completed many evaluations over the years, and that he had never been quite so moved by an individual’s progress in eight months—“remarkable progress, a real change.” *Id.* at 257. He concluded that even though the individual is a perfectionist, he is not merely trying to do the program faster and better than everyone else, but he is really changing his behavior. *Id.* at 257. The psychiatrist also noted that the individual has been in recovery during significant events where many people customarily consume alcohol, e.g., a birthday, Christmas holidays, and yet he has continued to abstain. *Id.* at 259. He concluded that the individual is in remission with adequate evidence of rehabilitation and reformation. *Id.* at 260.

D. Mitigation of Security Concerns

The individual was diagnosed in November 2010 by a DOE psychiatrist as suffering from alcohol dependence, an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. At that time, the DOE psychiatrist found no evidence of rehabilitation or reformation and recommended one year of treatment and abstinence. At the time of the hearing, the individual had abstained for eight months, less than the 12 months recommended by the DOE psychiatrist. Nonetheless, the DOE psychiatrist and the individual’s counselor testified at the hearing and concluded that the individual has presented adequate evidence of rehabilitation or reformation from his illness. The professionals were impressed by the individual’s sincere commitment to his recovery. The counselor stated that the individual was very easy to work with, had a good prognosis and now understood his illness and how to avoid relapse. Ex. J. After a review of the record, I conclude, for the following reasons, that the individual has mitigated the security concerns related to Criteria H and J.

I was persuaded by the witness testimony at the hearing and my observation of the individual at the hearing. He credibly testified about his ongoing treatment and how the treatment program had changed his life for the better. His enthusiasm for AA and commitment to understanding his problem were evident in his testimony. The counselor gave him high praise throughout the proceeding for his cooperation and comprehension. I was impressed by the sincerity and support in the testimony of his girlfriend, and I also found his neighbor, sponsor and colleague, who had experience with alcohol issues themselves, very credible witnesses. The individual testified that he was committed to attending AA meetings and lifelong sobriety, and appeared to genuinely enjoy his meetings.

I conclude that the individual has mitigated the security concerns relating to his alcohol dependence. He has acknowledged his issues and there is credible documentary and testimonial evidence of his actions to overcome his problems with alcohol. He has established a pattern of abstinence. Guideline G, ¶ 23(b). He has also completed his IOP, demonstrated a clear pattern of abstinence in accordance with the recommended treatment, and has received a favorable prognosis by all the mental health professionals who testified at the hearing. Guideline G, ¶ 23(d). Therefore, I conclude that he has mitigated the Criterion J concerns regarding the diagnosis of alcohol dependence. The Criterion H security concern relating to his judgment or reliability stems from a condition (alcohol dependence) that is readily controllable with treatment, and the individual has

demonstrated ongoing and consistent compliance with the treatment plan. Guideline I, ¶ 29 (a). He is currently receiving counseling with a favorable prognosis by a duly qualified mental health professional and the DOE psychiatrist has opined that the individual's previous condition is in remission. Guideline I, ¶ 29 (a)-(c). Therefore, I conclude that the individual has also mitigated the Criterion H concerns regarding his judgment and reliability.

III. Conclusion

As explained in this Decision, I find that the LSO properly invoked 10 C.F.R. § 710.8 (h) and (j). After carefully reviewing the testimonial and documentary evidence in a common-sense manner, I find that the individual has presented adequate mitigating factors for the Criteria H and J concerns. Thus, in view of the criteria and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: July 27, 2011