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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: August 17, 2017)	Case No.: PSH-17-0055
)	
_____)	

Issued: January 16, 2018

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold 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 *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (Adjudicative Guidelines), I conclude that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position for which he holds a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the individual’s arrest for Aggravated Driving While Under the Influence of Intoxicating Liquor, among other charges, after his involvement in a single car accident in September 2016 which resulted in his son’s loss of an arm. In order to address those concerns, the LSO summoned the individual for a personnel security interview (PSI) in November 2016. Following the November 2016 PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychologist (DOE psychologist).

On May 15, 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

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.

continue to hold an access authorization and that the LSO had suspended his security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines I (psychological conditions) and J (criminal conduct) 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 presented the testimony of a friend (Friend) and testified on his own behalf. The DOE Counsel presented the testimony of the DOE psychologist. The DOE submitted 10 exhibits (Exhibits 1-10) into the record, and the individual tendered seven exhibits (Exhibits A-G). 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 of 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 continued eligibility for access authorization. The information in the letter specifically cites Guidelines I and J of the Adjudicative Guidelines, which

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.

relates to security risks arising from certain psychological conditions and criminal conduct, respectively. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27. Additionally, criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Guideline J at ¶ 30.

In citing Guideline I, the LSO stated that it was relying upon a December 2016 written evaluation of the individual authored by the DOE psychologist. The LSO stated that the DOE psychologist had concluded that the individual's "personal limitations," i.e., an unawareness of feeling guilt or remorse, would likely make it difficult to have confidence in his trustworthiness. Ex. 4 at 8. Specifically, the individual's failure to feel guilt or remorse results in a failure of internal guidance when he deviates from his moral inclinations. Ex. 4 at 8. Consequently, these mental characteristics are likely to impair his judgment, reliability and trustworthiness. Ex. 4 at 8.

With regard to its invocation of Guideline J, the LSO cited the individual's September 2016 accident and his arrest on various charges. Ex. 1; *see* Ex. 8. During his November 2016 PSI, the individual admitted that prior to the accident that resulted in this arrest, he had consumed four 12-ounce beers. The LSO also cited a May 2014 citation of the individual for failing to wear a seatbelt. Ex. 4 at 37.

Given the information described in the Notification Letter, I find that the LSO had sufficient grounds to invoke Guidelines I and J of the Adjudicative Guidelines.

IV. Findings of Facts

On May 28, 2014, the individual was cited for failure to wear a seatbelt. Ex. 9 at 37.

In the afternoon of September 24, 2016, the individual had been off-roading with his Jeep Cherokee. Ex. 9 at 14. The individual during that afternoon consumed four 12 ounce beers. Ex. 9 at 15. While driving home with two of his sons, the individual hit an embankment and turned his vehicle on its side. Ex. 9 at 10-11. One of the sons was injured in the accident and ultimately lost his right arm as a result of the accident. Ex. 9 at 17. The local police arrested the individual on a number of charges: Aggravated Driving While Under the Influence of Intoxicating Liquor; Causing Great Bodily Injury While Under the Influence of Alcohol; two counts of Abuse of a Child (child placed in a dangerous situation); Reckless Driving; Failure to Use a Seatbelt; two counts of Failure to Properly Restrain a Child in a Vehicle. Ex. 8 at 1. Six-and-a-half hours after the individual's last consumption of beer, his individual blood alcohol level was measured at 0.04. Ex. 9 at 22.

After conducting the PSI with the individual, the LSO referred the individual for an examination by the DOE Psychologist in December 2016. In a report (Report), the DOE Psychologist opined that the individual's "personal limitations are likely to make it difficult to have confidence in his trustworthiness. Ex. 8 at 8. The DOE Psychologist noted that the individual appeared to minimize the number of alcoholic beverages he consumed before the accident based upon the individual

measured alcohol level.³ Ex. 8 at 3. During his examination, when asked if he felt depressed about the injury to his son and the accident, the individual asserted that he “doesn’t feel depressed but sometimes sad . . . it was just an accident.” Ex. 8 at 4, 8. The DOE Psychologist also contacted the DOE facilities Employee Assistance Program (EAP) counselor, who the individual had seen for counselling. Ex. 8 at 4. The EAP Counsellor informed the DOE Psychologist of his concern, among other things, with the individual’s “flat affect” about the accident and about the individual not being troubled with negative feelings concerning the loss of his son’s arm. Ex. 8 at 4. The DOE Psychologist also noted that the individual had undergone two prior PSIs which focused on his financial problems.⁴ Ex. 8 at 5. The DOE Psychologist concluded that based upon these PSIs, the individual “does not reliably make sound judgments about situations in which he is particularly vulnerable and does not seem to anticipate possible consequences.” Ex. 8 at 5.⁵

The DOE Psychiatrist concluded that the individual had a mental condition that could impair his judgment and reliability. Specifically, the DOE Psychologist determined that:

[The individual] will continue to portray himself as rather blameless and often without the emotional experiences that would be expected of most others. Without being aware of feeling guilt and remorse, when appropriate, [the individual] is deprived of principle internal guidance when he departs from his moral inclinations. As described above, this impairment is mainly due to his focus on immediate events (i.e., concreteness), difficulty or disinterest in anticipating events (i.e., poor abstracting ability and fund of knowledge), and his emotional constriction. . . . These personal characteristics limit his experience of the world and are likely to impair his judgment, reliability and trustworthiness.

Ex. 8 at 8-9.

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

³ According to the DOE Psychologist’s calculation, the individual must have consumed eight or nine alcoholic beverages in order to have a blood alcohol level of 0.04g/100ml six-and-a-half hours after his last consumption of alcohol prior to the accident. Ex. 8 at 3.

The DOE Psychologist also noted the fact that the individual had “jacked up” the height of his jeep and that this fact may have contributed to his jeep tipping over. Ex. 8 at 3. The individual stated during this interview that he had asked his sons to wear seatbelts and had looked back to insure that the seatbelts were closed. However, the individual believed that his sons may have moved their seatbelts under their arm after he started driving. Ex. 8 at 3.

⁴ The DOE did not cite the individual’s financial concerns as raising a security concern.

⁵ The DOE Psychologist did not diagnose the individual as suffering from any type of alcohol use disorder. Ex. 4 at 7. The Report states that the DOE Psychologist did not find sufficient evidence to conclude that the individual habitually used alcohol to excess. Further, the DOE Psychologist found that the individual did not meet the criterion for a diagnosis of an alcohol use disorder under the Diagnostic and Statistical Manual 4th or 5th edition. Ex. 4 at 7. Additionally, a laboratory blood and urine testing confirmed that the individual was currently abstinent from alcohol and had not consumed alcohol excessive amounts in the several weeks prior to the test. Ex. 4 at 7. The DOE did not cite the individual’s alcohol consumption as a security concern.

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 security clearance 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.

A. Guideline I

At the hearing, the individual testified that he has worked at the DOE facility for 19 years and has had a security clearance for approximately 10 years. Tr. at 23. He has never received any discipline for any problems at work or for lapses in security rules, and he has received awards for his work. Tr. at 23. The individual testified that, with regard to the Report, the only way he could respond is that he believes that he is a very private person. Tr. at 26-27. The individual testified that others have told him that he is "quiet." Tr. at 27. When asked by the DOE Psychologist about incidents casting doubt about his judgment, his prior financial issues and the fact that he drove a jacked up jeep relatively fast on a back road, the individual stated "I really can't say . . . I'm trying to fix my credit . . . I shouldn't have been going that fast." Tr. at 30.

The individual testified that after his interview with the DOE Psychiatrist he sought counselling with a therapist (Therapist) and sought treatment from a psychiatrist (Psychiatrist). Tr. at 32. The Psychiatrist prescribed the individual Sertraline, an antidepressant drug, and the individual testified that he feels better since starting the medication. Tr. at 33.

After the hearing, the individual submitted a letter (Letter) from the Psychiatrist detailing her evaluation of the individual.⁶ Ex. C. In the Letter, the Psychiatrist states that the individual had sought treatment in April 2017, and that she had diagnosed the individual as suffering from Generalized Anxiety Disorder (GAD) and Post Traumatic Stress Disorder (PTSD). Ex. C at 1. The Psychiatrist stated that she had reviewed the Report and that she disagreed with several of its conclusions. The Psychiatrist found that the individual's unwillingness to show distress could be related to the individual's "adherence to cultural and personal norms that were not in the DOE Psychologist's 'range of expectations.'" Ex. C at 1. The Psychiatrist stated that, given that the individual suffers from PTSD and is trying to deal with his emotional triggers, the individual would not show an excess of emotion in an environment where he does not feel safe. Ex. C at 1. The Psychiatrist noted that "any reasonably prudent person" would control themselves in a situation where they are being evaluated for job performance or possible termination. Ex. C at 1.

The Psychiatrist also opined in the Letter that the "personal limitations" described in the Report do not constitute a personality disorder or suggest habitual untrustworthy behavior. The emotional response of the individual who has been affected with trauma and the subsequent development of the symptoms of PTSD is affected by the cultural, religious, and personal schema of the individual. The Psychiatrist believed that the individual's unwillingness to show distress could be related to his adherence to certain cultural and personal norms of behavior. Ex. C at 2. The Psychiatrist stated that the individual is responding well to medication for his PTSD and GAD, and is compliant with

⁶ The Psychiatrist reviewed the DOE Psychologist's Report regarding the individual. Ex. B at 1.

their treatment goals. The Psychiatrist concluded that, in her opinion, the individual does not suffer any impairment to his judgment, reliability, or trustworthiness. Ex. C at 2.

At the hearing, the individual submitted a letter from the DOE facility's EAP Counselor. Ex. B. The EAP Counsellor noted that the individual had sought treatment from the Psychiatrist and the Therapist on his own initiative. Ex. B at 1. After visiting the Psychiatrist, the EAP Counsellor also noted that the individual's affect was greatly improved and that the individual was able to smile and laugh appropriately and to conduct a conversation. The EAP Counselor stated that the individual and his wife were attending counselling with the Therapist. Ex. B at 1. The EAP Counsellor consulted with the Therapist and was informed of the Therapist's belief that, despite the issues that the individual was dealing with, the individual could be counted on to work in a safe and secure manner. Ex. B at 1. The EAP Counsellor concurred with the Therapist's opinion.⁷ Ex. B at 1.

The individual also submitted a letter from the Therapist. Ex. G. In the letter, the Therapist stated that he had numerous sessions with the individual and that he saw no reason why the individual could not perform his job competently. Ex. G at 1. The Therapist also stated that he had seen no evidence of the individual having any problems related to substance abuse. Ex. G. at 1.

The Friend testified that she has worked at the DOE Facility for approximately six years and works as a colleague of the individual. Tr. at 9-10. She testified as to the individual's excellent customer service skills. Tr. at 11. She stated that the individual is also very scrupulous in letting others know if he cannot perform a task because it requires an employee with a security clearance. Tr. at 11. She further stated that, when he possessed a security clearance he always handled classified packages in a proper manner. Tr. at 11.

The Friend testified that she and the individual have been able to talk to each other about personal matters. As an example, the Friend testified that when the accident occurred the individual was very concerned about how his sons were doing, especially so since he had been detained in a local jail. Tr. at 14. The Friend recounted how helpless she felt regarding her inability to immediately help the individual. Tr. at 14. The Friend testified that the individual does not talk to a large number of people but that he is selective in who he trusts. Tr. at 14-15. The Friend believes their relationship is similar to that of a brother and sister, Tr. at 15, and that the individual will ask her for advice for issues that come up in his life. Tr. at 16-17. She noted that the individual always attends his older son's basketball games even though he's "not a basketball player." Tr. at 17. She stated that the individual also made a special effort to get a certain bike for his son who was injured in the accident. Tr. at 17.

When asked about concerns regarding the individual adequately conveying his feelings, the Friend testified that the individual is a "stereotypical Northern [State] man" who does not typically share his feelings with others. Tr. at 19. She believes that this attitude is cultural. Tr. at 19-20. The Friend affirmed that the individual is able to share his feelings with her concerning the events in his life. Tr. at 18. She stated that she has seen the individual cry because of the injuries to his son from the accident. Tr. at 20.

⁷ The EAP Counsellor explained that he would be away from work on the date of the hearing and thus unavailable to testify in person. Ex. B at 1.

After the hearing, the individual also submitted a letter from his wife.⁸ Ex. D. In her letter, the individual's wife stated that she met the individual in May 2008, and that, while she and the individual will occasionally have one or two beers, she had never seen the individual intoxicated in the nine-and- one-half years they have been together. Ex. D at 2. She stated that, when she was informed about the accident, her main focus was on her son, and that she could not believe that the individual had been arrested for DWI. She stated in the letter that she and the individual, as well as her two sons involved in the accident, have been in therapy, and that through therapy, she has learned that people deal with tragedies in different ways. Ex. D at 2.

The letter goes on to state that as long as the individual's wife has known the individual, the individual has been a "very quiet and passive person." Ex. D at 2. The individual has solely supported their family since January 2011 and has helped her raise her daughter and a son from a previous relationship. The individual's wife was also awarded permanent guardianship of her second cousins in January 2017, and the individual has helped her raise them along with supporting his three sons. Ex. D at 2. The individual's wife states that the individual is a "very kind, loving, generous, responsible, respectful man and he is an amazing father to all of his children." Ex. D. at 1.

After hearing the individual and friend testify and reviewing the Letter, the DOE Psychologist testified that based upon the report from the psychiatrist and from the EAP Counsellor, one of his concerns regarding the individual's lack of emotion and his lack of a conscious had been somewhat reduced. Tr. at 52-53. However, nothing he had heard mitigated his concern about the individual's ability to "recognize current behavior and make appropriate judgments about modifying what you do next." Tr. at 53. The DOE Psychologist went on to testify that "[the individual] is always going to be vulnerable to not being able to foresee . . . the future consequences of behavior. So since he's not being faulted for alcohol use, he may well continue to binge and make bad judgments, just not to the extent that with the framework we have to use at DOE that it is pathological." Tr. at 54.

The DOE Psychologist acknowledged the Psychiatrist's opinion that the individual did not have an alcohol problem. He also acknowledged the EAP Counselor's finding that the individual did not appear to have an alcohol problem on the basis of standardized screening test for alcohol use disorders. Tr. at 56. However, the DOE Psychologist opined that the screening test administered by the EAP Counsellor would not be efficacious in a situation where disclosure of alcohol use could affect a person's employment. Tr. at 56-57. He also noted that he had no information before him that indicated that the individual had reduced his consumption of alcohol. Tr. at 57. The DOE Psychologist noted the individual's various financial problems were also examples of the individual's failure to foresee future consequences. Tr. at 66. When asked about rehabilitation, the DOE Psychologist noted that the Psychiatrist had opined that there was no drug or therapy that would improve the individual's judgment. Tr. at 62.

After reviewing all of the evidence and testimony, I find that the individual has resolved the security concerns raised by the Guideline I derogatory information contained in the Notification Letter. The DOE Psychologist has maintained in his testimony that, despite the additional information provided by the Psychiatrist and the EAP Counsellor, he believes that the individual

⁸ The individual's wife was unable to testify in person or by telephone because of her new position in a hospital.

has a fundamental defect in judgment. As the DOE Psychologist testified, one of his concerns that led him to his finding this defect, the individual's lack of emotion and a lack of a well-developed conscience, has been lessened by the information provided by the Psychiatrist and the EAP Counsellor. As for the other concern, the individual's alleged inability to recognize current behavior and make appropriate judgments about a future course of action, I find the DOE Psychologist's findings to be less convincing.

The DOE Psychologist has cited the individual's failure to appreciate consequences with regard to his alcohol consumption as a factor in his conclusion regarding the individual's judgment. Other than the individual's misuse of alcohol which led to the accident, there is no evidence as to other examples of alcohol misuse. None of the experts, including the DOE Psychologist, found that the individual had any type of alcohol use disorder. In the Letter, the Psychiatrist noted that the fact that the individual has performed well at his employment for the past 17 years argued against a finding that the individual had a "personal limitation" that would impair his judgment, reliability and trustworthiness.⁹ Ex. B at 2. I also found convincing the Friend's testimony regarding the individual's excellent job performance and his relationship with others. Consequently, I find that the individual has resolved the security concerns raised by the Guideline I derogatory information.

B. Guideline J

The Guideline J security concerns regard the criminal charges associated with the accident and the individual's 2014 citation for failure to wear a seatbelt. I note that during the individual's 19 years of employment there appear to be only these two incidents of criminal activity. Tr. at 69. The nature of the 2014 seatbelt citation alone does not seem to indicate that the individual engaged in a deliberate criminal activity. Nor does it, taken alone, seem to imply a significant defect of reliability, judgment, or trustworthiness. The charges from the September 2016 accident are more serious. In this regard, the individual testified that all charges filed against him from the September 2016 accident have been dismissed. Tr. at 68.

The individual's wife submitted a written statement in which she stated that in the nine-and-a-half years she has known the individual she has never seen him consume alcohol excessively. Ex. E at 2. She also stated that she was "in shock" when she found out he had been arrested and that it has never "crossed [her] mind that this was anything but an accident." Ex. E at 1. The individual's in-laws also submitted a letter in which they stated that they had never seen the individual intoxicated. Ex. E at 1. Given the evidence before me I find that the September 2016 accident arrest resulted from an isolated incident where the individual did not use good judgement, but does not reflect a pattern of criminal conduct.¹⁰ Consequently, I find that Guideline J mitigating factor ¶ 32(a) is applicable in this case " . . . [the criminal activity] happened under such unusual circumstances that it is unlikely to recur and does not case doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicatory Guidelines, Guideline J at ¶ 32(a). *See Personnel Security Hearing*, Case No. PSH-17-0039 (2017) (2016 DWI mitigated).

⁹ The Psychiatrist apparently erroneously believed that the individual had been employed at the DOE facility for 17 years instead of his actual period of employment of 19 years.

¹⁰ I note that the DOE Counsel opined that Guideline J derogatory information in this case was not a significant security concern. Tr. at 68-69.

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 Guidelines I and J. 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 Guidelines I and J. 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 DOE should restore the individual's access authorization at this time.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals