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

In the Matter of: Personnel Security Hearing)
)
Filing Date: January 29, 2018)
_____)

Case No.: PSH-18-0011

Issued: May 10, 2018

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXXX XXX (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, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

On April 4, 2017, the Individual was arrested for Driving While Under the Influence of Liquor or Drugs (DUI). Ex. 3 at 1. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on June 16, 2017, and sponsored a forensic psychological evaluation of the Individual on July 27, 2017, in order to address the security concerns raised by this arrest. Because the PSI and psychological evaluation did not resolve all of the LSO’s security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual 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 Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on March 29, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his second level manager, his counselor (the Counselor), his fiancée, his prospective mother-in-law, a coworker, a friend, a DOE Personnel Security Specialist (the PSS), and a DOE Psychologist (the DOE Psychologist). See Transcript of Hearing, Case No. PSH-18-0011 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits,

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.

marked as DOE Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual did not submit any 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 Guidelines E and I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Under Guideline E, Personal Conduct, the LSO alleges that the DOE Psychologist “concluded that [the Individual’s] inability to be candid about his drinking and stating that he had been abstinent for several months when [he] had not done so makes him unreliable and untrustworthy,” and that the Individual claimed to have abstained from alcohol use when laboratory tests administered to him indicated that he had been consuming more alcohol than he admitted. Ex. 1 (Statement of Security Concerns) at ¶ I.A and ¶ I.B. The Guidelines provide that “[c]onduct involving questionable judgment, lack of candor, [or] dishonesty. . . can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to . . . provide truthful and candid answers during national security investigative or adjudicative processes.” Guideline E at ¶ 15. The Guidelines further provide that “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative” can raise a security concern and may be disqualifying. Guideline E at ¶ 16. Accordingly, these allegations adequately justify the LSO’s invocation of Guideline E.

The LSO also alleges, under Guideline I, Psychological Conditions, that the DOE Psychologist has concluded that the Individual has “a mental condition, deceptiveness, which can continue to impair judgment, reliability and trustworthiness.” Statement of Security Concerns at ¶ II. The Guidelines provide that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Guideline I at ¶ 28. Guideline I also provides that “an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness” may raise a security concern and be disqualifying. Guideline I at ¶ 28(a). In the present case, after hearing the DOE Psychologist’s hearing testimony and reading his report, I was not convinced that the Individual’s deceitfulness constitutes a condition that may impair judgment, stability, reliability, or trustworthiness. However, I was convinced by the DOE Psychologist’s testimony that the Individual’s deceitfulness was a behavior that casts doubt on the Individual’s judgment, stability, reliability, or trustworthiness, and that may indicate an emotional, mental, or personality condition, which may in turn raise a security concern and be disqualifying under Guideline I at ¶ 28(a). Nevertheless, Paragraph 28(a) specifically provides that it is not applicable to behavior that is covered under any other guideline. In the present case, the Individual’s deceitfulness is clearly covered under Guideline E. Accordingly, I have analyzed the present case under Guideline E only, with no effect on the outcome of the case.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires 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 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). 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.

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

On April 4, 2017, the Individual was arrested for DUI. Ex. 6 at 1. At the time of the DUI arrest, the Individual's blood alcohol concentration (BAC) was found to be .23. Ex. 8 at 2. After the Individual reported his DUI arrest, the LSO conducted a PSI of him on June 16, 2017.² The Individual stated that he had not consumed alcohol since his DUI. Ex. 8 at 14, 16. The Individual indicated that he was abstaining from alcohol use, but had not decided to do so on a permanent basis. Ex. 8 at 20, 25. The Individual attended an Intensive Outpatient Program (IOP), which he completed on June 5, 2017, and began attending counseling sessions with the Counselor as a result of the DUI. Ex. 8 at 20. He reported, however, that the Counselor does not believe that he has a problem with alcohol. Ex. 8 at 20-21.

Since the PSI did not resolve the security concerns raised by the Individual's DUI, the LSO requested that the Individual be evaluated by the DOE Psychologist, who conducted a one and one-half hour interview of the Individual on July 27, 2017, reviewed the Individual's personnel security file, and contacted the Counselor to obtain her perspective on the Individual. Ex. 6 at 2. The DOE Psychologist also administered the Minnesota Multiphasic Personality Inventory 2, Restructured

² During this PSI, the Individual reported consuming three pint-sized beers and two mixed drinks prior to the arrest. Ex. 8 at 7-8. The Individual reported that he did not feel drunk, but rather "a little intoxicated" or "lightheaded" at the time of the arrest, and estimated that it would take him seven or eight drinks to become intoxicated. Ex. 8 at 11-12, 26.

Form (MMPI-2 RF) to the Individual, and asked him to take two laboratory tests, the Ethyl Glucuronide (EtG) and Phosphatidylethanol (PEth) tests. Ex. 6 at 2.

On August 12, 2017, the DOE Psychologist issued his Psychological Assessment (the Assessment) of the Individual. In the Assessment, the DOE Psychologist reported that the Individual claimed that the Counselor does not think he has an alcohol problem, and does not believe that he needs further treatment. Ex. 6 at 3. The DOE Psychologist reported, however, that the Counselor had reported to him that the Individual had been defensive, and that she had doubts about how forthcoming and candid the Individual had been during the IOP. Ex. 6 at 4, 6. The DOE Psychologist further reported the Counselor's concern that the Individual's alcohol problem might be more serious than the Individual was admitting. Ex. 6 at 4. The DOE Psychologist noted that several objective indicators raise concerns about the Individual's alcohol consumption: his BAC of .23 at the time of his DUI arrest; the results of the PEth test indicating that he had recently been engaging in moderate to heavy alcohol consumption; and his history of operating a motor vehicle while intoxicated. Ex. 6 at 5. The DOE Psychologist further noted that the Individual appeared to have developed a tolerance to alcohol, and expressed a concern that the Individual might be engaging in binge drinking. Ex. 6 at 6. However, the DOE Psychologist concluded that the Individual cannot be diagnosed with a Substance Use Disorder under the Diagnostic and Statistical Manual, 5th Edition (DSM-5), and that the Individual "does not appear to have an emotional, mental, or personality condition that can impair judgment, reliability or trustworthiness."³ Ex. 6 at 6. Nevertheless, having made that statement, the DOE Psychologist concluded his report by stating that the Individual has:

a mental condition, deceptiveness, that can continue to impair judgment, reliability or trustworthiness. His not being candid about his drinking and stating that he had been abstinent for several months when he had not done so constitutes a mental tendency that makes him unreliable and untrustworthy. It is not possible to speculate on his prognosis without having information about whether he enters treatment, what type of treatment that might be, and his response to that treatment.

Ex. 6 at 7.

At the hearing, the Individual acknowledged that he had been deceptive during his interview with the DOE Psychologist. Tr. at 95. The Individual contended, through the testimony of the Counselor, that his deceptiveness was a symptom of his alcohol problem. The Individual also presented additional testimony, including that of the Counselor, in support of his contention that he is sufficiently rehabilitated and has progressed far enough in his recovery from his alcohol problem to mitigate the security concerns raised by his lack of candor during his psychological evaluation interview.

Several character witnesses testified on behalf of the Individual. His second level manager testified that the Individual is "very trustworthy," "honest," "hardworking," and "dependable." Tr. at 19-21. She further testified that the Individual has grown significantly in maturity during his employment. Tr. at 23. A friend testified that, starting in October 2017, the Individual began staying home and avoiding drinking situations. Tr. at 60. The Individual told his friend that the

³ At the hearing, the DOE Psychologist testified that this was an unintentional misstatement. Tr. at 167-168.

Individual realized he needed to grow up. Tr. at 61. The Individual's girlfriend, who co-habitates with the Individual, testified that he has decided to completely abstain from alcohol use. Tr. at 82. She further testified that being deceitful was not in character for the Individual, and that he has always been honest with her. Tr. at 83.

At the hearing, the Individual testified that he agreed with the Assessment, and acknowledged that his own actions led to his security clearance being suspended. Tr. at 91. The Individual also acknowledged that he had not been honest about his drinking during his interview with the DOE Psychologist. Tr. at 95. The Individual testified that he had been backed into a corner and panicked, and that his lack of candor was a one-of-a-kind event. Tr. at 95, 107, 113. The Individual testified that he now realizes how important it is to be truthful, and to be worthy of other people's trust, and that "trust is one of the most important things to go on with life or through life with." Tr. at 96. He testified that he has learned from his mistakes, and does not see himself repeating them in the future. Tr. at 102. The Individual stated that he has attended the IOP and aftercare meetings, and has obtained counseling. Tr. at 96- 98. He testified that he sees the Counselor once a month. Tr. at 107. The Individual testified that he stopped consuming alcohol in October 2017, and that his life has been fine without alcohol. Tr. at 99-101, 104-105. He stated that he had been abstaining from alcohol use from the day after his DUI until two weeks prior to his psychological evaluation. Tr. at 105. The Individual testified that he had not consumed alcohol to excess. Tr. at 105. He testified that he has stopped drinking primarily in order to get his clearance and Human Reliability Program certification back. Tr. at 111-112. The Individual testified that he does not believe that he has a problem with alcohol. Tr. at 112. The Individual further testified that "I would definitely be fine if I started drinking again." Tr. at 112. The Individual admitted that he told the DOE Psychologist that the Counselor did not believe he had an alcohol problem. Tr. at 113.

The Counselor testified that she first saw the Individual in April 2017, and has met with him on a monthly basis since then. Tr. at 116, 126. She immediately advised him to stop drinking and referred him to the IOP at that time. Tr. at 116. She testified that the Individual began the IOP on April 24, 2017, and completed it on June 5, 2017. Tr. at 126. Since completing the IOP, he has attended aftercare twice a month. Tr. at 126. In October 2017, the Individual informed the Counselor that he had resumed consuming alcohol, albeit in a controlled manner, and contrary to the Counselor's advice. Tr. at 117-118, 128. The Counselor testified that "If you're drinking alcohol and it's causing problems in your world and you keep drinking anyway, you've got a problem with alcohol. You may not be an alcoholic, you may not be diagnosable, but you've got a problem with alcohol. And my advice at that moment, without question, is stop drinking, period." Tr. at 118-119. She agreed that she forcefully expressed this opinion to the Individual in October 2017, after hearing that he had been consuming alcohol. Tr. at 119, 128. The Counselor opined that the Individual does not have a pathological, mental, psychological, or emotional disorder that would necessarily cause or create ongoing dishonesty. Tr. at 120. The Counselor testified that the Individual's lack of candor was a "symptom and result of" his drinking behavior." Tr. at 129, 136. The Counselor opined that the Individual's deception was not "characterological," but rather situational, and was a result of his alcohol issues rather than a deep-seated character flaw. Tr. at 130, 136. The Counselor opined that the Individual is not a liar, but rather because of his youthfulness and inexperience, he "was less than honest." Tr. at 120-121. The Counselor also contended that the Individual's youth and alcohol problem contributed to his inability "to make good decisions when it came to drinking." Tr. at 123, 129-130, 135-137. The Counselor further contended that the Individual has recently matured and "learned a lot." Tr. at 122. She opined that

she would be surprised to find the Individual “in a situation like this again.” Tr. at 122. She also testified that the Individual had no experience in his life with “difficulty, failure, being the bad guy.” Tr. at 123. She further testified that she believes that the Individual’s interest in maintaining employment at the DOE facility is a powerful external motivator for the Individual. Tr. at 125. When the Counselor was asked if she had told the Individual that he did not have an alcohol problem, she responded:

I might have said, you know, something like “I’m not diagnosing you as an alcoholic,” and I’m not even saying that there is a diagnosis on board, but, Dr. Smith, I always -- I always end that with “If you’re drinking alcohol and you keep -- and it’s causing problems and you keep drinking anyway, alcohol is the problem.” So, you know, what he heard, and what perhaps my mode of communication was, could be two different things.

Tr. at 131-132. The Counselor made it clear, however, that she never told the Individual that he did not need counseling or treatment. Tr. at 132. The Counselor testified that the Individual told her he is not using alcohol, and that she believes him. Tr. at 137. The Counselor testified that the Individual has made a lot of progress in his therapy, and that she “thinks” he will remain sober going forward. Tr. at 137. She testified that the Individual has changed his social system and is now in a serious relationship which will help him remain abstinent from alcohol. Tr. at 138. She also testified that she expects that the Individual will come to realize and understand that he has a problem with alcohol. Tr. at 138.

The PSS testified at the hearing on behalf of the LSO. She testified that honesty and integrity are the foundation upon which eligibility to maintain a security clearance is based. Tr. at 38. The PSS also testified that the security concerns arising from the Individual’s alcohol consumption and criminal activity had been mitigated. Tr. at 42-43.

The DOE Psychologist testified after observing the testimony of each of the other witnesses. He testified that he originally interviewed the Individual in order to determine whether the Individual has an alcohol disorder or problem. Tr. at 147. The DOE Psychologist testified that after he evaluated the Individual, he suspected that the Individual had an alcohol problem, but he did not have enough evidence to reach that conclusion with a sufficient degree of certainty. Tr. at 147-148. However, the DOE Psychologist found the Individual to be deceptive and lacking in candor during his interview. Tr. at 148. The DOE Psychologist testified that the Individual made three separate misrepresentations during his interview. First, he initially told the DOE Psychologist that he had not been drinking at all. Tr. at 148. Second, after the DOE Psychologist informed the Individual that he would undergo laboratory tests to detect whether he had used alcohol recently, the Individual informed the DOE Psychologist that he had consumed a beer a week earlier and had consumed some wine while taking communion. Tr. at 148. Third, the Individual stated to the DOE Psychologist that the Counselor did not believe that the Individual has an alcohol problem, and that she believed that he did not need any further counseling or treatment. Tr. at 149-150, 165. The DOE Psychologist opined that the Individual’s deceptiveness is not a symptom of his alcohol problem. Tr. at 152. Instead, the DOE Psychologist believes that “when his back is to the wall, [the Individual] has a hard time telling the truth.” Tr. at 155. The DOE Psychologist admitted that “deceptiveness is not a mental illness in itself,” but that deceptiveness is among the criteria used in the DSM-5 to define several diagnoses. Tr. at 153. When the DOE Psychologist was asked about

the Individual's prognosis for his deceptiveness, he stated: "I suspect his prognosis about lying, misrepresenting things, is moderately good; not excellent, because I think this is something that when he really gets in a jam, he's going to be prone to do and is really important." Tr. at 160.

V. ANALYSIS

The record shows that the Individual attempted to conceal his alcohol consumption, as well as the Counselor's concerns about his alcohol, during his interview with the DOE Psychologist. Dishonesty or lack of candor during a security clearance interview raises particularly serious concerns about an Individual's judgment, reliability, and trustworthiness, a point underscored in the Guidelines which specifically state that: "Of special interest is any failure to . . . provide truthful and candid answers during national security investigative or adjudicative processes." Guideline E at ¶ 15.

The Individual, through his legal counsel, has attempted to mitigate the security concerns raised by his dishonesty and lack of candor by contending that he has an alcohol "problem," and that his dishonesty is merely a symptom of his alcohol problem. To this end, the Individual has presented the testimony of the Counselor, who testified that the Individual's dishonesty and lack of candor was a symptom of his alcohol problem (rather than a more deep-seated characterological problem) and that she is convinced that the Individual is progressing sufficiently in his therapy with her to recover from his alcohol problem. The DOE Psychologist, in turn, testified that the Individual's dishonesty and lack of candor was not a symptom of an alcohol problem. If I were to find the Counselor's testimony convincing, it would provide a basis for concluding that the security concerns raised by the Individual's dishonesty and lack of candor might be mitigated. *See* Guideline E at ¶ 17(d) (security concerns arising under Guideline E 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.")

However, even if I were convinced that the Individual's dishonesty and lack of candor were caused solely by his alcohol problem, I would remain unconvinced that the Individual had mitigated the particularly significant security concerns raised by his dishonesty and lack of candor. First, I am not convinced that the Individual has sufficiently recovered from the alcohol problem described by the Counselor in her testimony. The Individual would clearly be in the early stages of his recovery, since he claims that he stopped using alcohol in October 2017, only six months before the hearing (if we assume he stopped using alcohol at the beginning of October, rather than at the end of that month). Second, the Individual's lack of candor and dishonesty during his Psychological Examination, just nine months before the hearing, makes it difficult to fully trust his present assertion that he has not consumed alcohol since October 2017. Third, and most importantly, the Individual has testified that he does not believe he has an alcohol problem, which raises grave doubts about whether the Individual's recovery has progressed to the point at which further dishonesty, lack of candor, or other manifestations of poor judgment, unreliability, or untrustworthiness would be unlikely to recur. In essence, the Individual is contending that his dishonesty and lack of candor occurred as a result of an alcohol problem which he claims he does not have.

Accordingly, I find that concerns raised under Guideline E by the Individual's lack of candor and dishonesty during Psychological Examination have been not been sufficiently resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E. I also find that Guideline I does not apply to the facts present in this case. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not sufficiently mitigated the concerns raised under Guideline E. Accordingly, the Individual has not demonstrated that restoring 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 not be restored at this time. The Individual 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