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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0019

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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." A Department of Energy (DOE) Operations Office determined that reliable information it had received raised substantial doubt concerning the individual's eligibility for access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the evidence and testimony in the record of this proceeding, the individual's access authorization should be restored. For the reasons stated below, I find that the individual's access authorization should not be restored at this time.

I. BACKGROUND

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The present proceeding arose when the personnel security branch of the DOE Operations Office (local security office) received a report about the individual from the Office of Personnel Management (OPM), after it had conducted a routine background investigation regarding continuance of her access authorization. The OPM report revealed that, after many years of struggling with alcohol dependence followed by ten years of sobriety, the individual had relapsed and had begun drinking to excess again. The local security office conducted a personnel security interview (PSI) of the individual in order to resolve its concerns about her current alcohol use. Learning that the individual had again stopped drinking alcohol about four months before the PSI, the local security office nevertheless had unresolved security concerns due to her alcohol consumption. Unable to resolve those concerns at the PSI, the local security office arranged for the individual to meet with a DOE consultant psychiatrist. The DOE psychiatrist examined the individual and determined that the individual suffers from alcohol dependence, without adequate evidence of rehabilitation or reformation.

On the basis of that information, the local security office issued the individual a Notification Letter, in which it stated that the DOE has substantial doubt about the individual's eligibility for access authorization, based on disqualifying criteria set forth in section 710.8, paragraphs (h) and (j). The Notification Letter refers to a written evaluation issued on June 14, 2002, in which the DOE psychiatrist found that the individual suffers from "Substance Dependence, Alcohol," as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). *See* 10 C.F.R. § 710.8(j) (Criterion J). In addition, he stated that her alcohol dependence is "an illness or mental condition, which causes, or may cause, a significant defect in judgment or reliability." *See* 10 C.F.R. § 710.8(h) (Criterion H).

The Notification Letter also informed the individual of her procedural rights, including her right to a hearing. The individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as hearing officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called three witnesses: the DOE personnel security specialist who had conducted the PSI, the DOE psychiatrist, and the individual. The individual, who represented herself, testified on her own behalf and called as witnesses her sister and two co-workers. The DOE submitted 24 written exhibits. The individual submitted one exhibit, a status report from her counselor. The record of this proceeding was closed when I received a copy of the transcript of the hearing (Tr.).

II. STANDARD OF REVIEW

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring her 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); *see, e.g., Personnel Security*

Hearing (Case No. TSO-0009), (October 21, 2003), and cases cited therein. In the present case, reliable information has raised such a question, and the individual has not demonstrated that restoring her security clearance will not endanger the common defense and will clearly be in the national interest.

III. FINDINGS OF FACT

The local security office has been aware of the individual's problems with alcohol for nearly twenty years. By 1984 the individual's alcohol consumption had increased to the point that she was discovered drinking on the job, was diagnosed as alcohol dependent and was hospitalized for six weeks. DOE Exhibit 23, Transcript of Personnel Security Interview, June 13, 1991 at 23-24. After that treatment, the individual participated in Alcoholics Anonymous (AA) and counseling through her employer while successfully hiding the fact that she was also continuing to consume alcohol. By late 1985, her drinking was affecting her job performance. The individual's supervisors confronted her and established a treatment plan, including abstinence, as a condition of continued employment. She was suspended in January 1986 for continuing to consume alcohol. *Id.* at 27-28. This time, through participation in AA and employee counseling, the individual managed to stop drinking entirely, and remained sober for a ten-year period. DOE Exhibit 24, Transcript of Personnel Security Interview, April 2, 2002 at 57. In 1996, medical and marital problems combined to cause the individual to relapse. *Id.* at 60-61. Intensive outpatient therapy again restored her to sobriety, this time for about two years. By 1998, the individual had resumed drinking alcohol, and continued drinking sporadically until November 2001. *Id.* at 71-72. Nothing in the record of this proceeding contradicts the individual's assertion that she has abstained from alcohol since Thanksgiving of 2001.

A DOE consultant psychiatrist examined the individual and reviewed her medical and personnel security records in May 2002, and provided a report to the local security office. DOE Exhibit 8 (Psychiatrist's Report). He diagnosed the individual as suffering from alcohol dependence, with physiological dependence in early full remission. He further stated that she has been a user of alcohol to excess "at least from 1984 to 1985 and then again from 1998 to 2001." *Id.* at 17.^{1/} On the basis of her seven months of sobriety at the time of the evaluation, the DOE psychiatrist expressed his opinion that the individual had not achieved rehabilitation or reformation from her alcohol dependence, particularly in light of the long history of her dependence, the significant extent of the therapy she had received, her relapse after a ten-year period of sobriety, and the fact that she was not currently engaged in any therapy or involvement with the recovering community. *Id.* at 17-18. As adequate evidence of rehabilitation or reformation, the DOE psychiatrist stated that the individual would have to participate in AA and completely abstain from alcohol for three years, or completely abstain for five years if she chose not to attend AA sessions. *Id.* at 18. Until she

^{1/} The DOE psychiatrist also expressed the possibility that the individual "has some type of depressive disorder." *Id.* He did not develop this possibility into a firm diagnosis, and as the matter was not further developed at the hearing, my analysis here is restricted to the individual's illnesses related to alcohol consumption.

achieved rehabilitation or reformation, she had an “illness or mental condition which causes, or may cause, a significant defect in judgment or reliability.” *Id.* at 18-19.

At the hearing, I heard testimony from co-workers and the individual’s sister that attested to her excellent job skills and work attitude, as well as her personal strengths at coping with life’s difficulties. The following testimony, however, provided specific and current insight into the concerns the local security office has identified in this case.

After discussing the two areas of concern the local security office had with respect to the individual, Criteria H and J, the personnel security specialist explained the serious nature of the concerns. He stated that a person’s judgment and reliability can be affected when she is under the influence of alcohol. In that state, a person may divulge classified information, possibly without even realizing it. Tr. at 10.

The individual testified about her progress with alcohol dependence since the DOE psychiatrist’s evaluation of her in May 2002. She stated that she has maintained her sobriety since Thanksgiving of 2001, as she told the DOE psychiatrist at the time of the evaluation. *Id.* at 57. She has been attending AA regularly, once or twice weekly, since June or July of 2002. She is currently seeking another AA sponsor, as her former sponsor moved away, and she feels her current, temporary sponsor is not appropriate for her. She explained that her current sponsor does not publicly acknowledge her own alcoholism, and would not appear at the hearing for fear of being discovered and losing her job; in contrast, the individual has been outspoken about her alcoholism. *Id.* at 69, 80. She has not been participating in any other form of treatment. *Id.* at 67. She is currently taking Antabuse, a prescription medication that discourages alcohol consumption by causing the patient to feel physically ill if alcohol is ingested. *Id.* at 70. She feels that her relapse in 1996 was triggered by a combination of a bad marriage and serious medical problems, but now she is healthier physically and stronger emotionally. *Id.* at 71-72. Nevertheless, her ex-husband still lives with her and sleeps in her living room, and she acknowledges that this situation, though apparently amicable, is not good for either of them. *Id.* at 77. Her plans for the future include seeing her ex-husband move out, moving herself, getting more involved with AA, possible seeking more counseling, and discontinuing Antabuse. *Id.* at 69, 86-88.

The DOE psychiatrist testified that when he evaluated the individual, she had abstained from alcohol for seven months, by her own reckoning. He felt that she was honest in her interactions with him, but he also felt that she might be minimizing her use of alcohol. *Id.* at 31. Consequently, he was not convinced that she had been entirely abstinent for the period she claimed. Taking her at her word, however, even the seven months she claimed were not, in his opinion, adequate evidence of rehabilitation or reformation: “That was evidence of reformation, but given her past history of alcohol dependence and relapse, I didn’t consider seven months adequate, so my answer to the question [posed by the local security office] was no, that there wasn’t adequate evidence of rehabilitation or reformation.” *Id.* at 23. Explaining his recommendation for adequate evidence of rehabilitation or reformation in this case, the DOE psychiatrist testified that he considers a number of personal factors before he reaches his opinion, which is highly dependent upon the individual:

I tend to require more evidence if somebody is alcohol dependent than if they simply suffer from alcohol abuse. I tend to often require more evidence of rehabilitation or reformation if somebody has been through treatment and then has seriously relapsed.

. . . [F]or adequate evidence of rehabilitation, I said that she needed to produce documented evidence of attendance at AA for a minimum of 150 hours, with a sponsor once a week for a minimum of three years, be completely abstinent from alcohol and all nonprescribed controlled substances for a minimum of three years, and then I made the statement that any future resumption of drinking or using a . . . nonprescribed controlled substance will be evidence that she's not showing adequate evidence of rehabilitation.

Then under adequate evidence of reformation, I gave her two alternatives. I said that if she went through the rehabilitation program, which is essentially AA, that she needed three years of absolute sobriety to show adequate evidence of reformation; and that if she didn't go through the rehabilitation of AA and she simply just stopped drinking, that I wanted to see five years of absolute sobriety.

I will state for the record that this is a long time. I have sort of various categories of how long I recommend, and this is the longest that I ever recommend. It isn't that I haven't recommended this of other people, but . . . sometimes I say that you only need a year of sobriety. In this [instance], I'm saying you need three years if you're active in AA.

So given my spectrum of where my recommendations fall, this is definitely a long length of time. Again, I tailored it specifically to the history of drinking and relapses over the years.

Id. at 24-25. At the hearing, I invited the DOE psychiatrist to observe the individual and hear the testimony offered concerning her involvement with alcohol during the nine months that passed since he conducted his evaluation of the individual. After we had heard all the testimony, I asked him whether he had revised his opinion concerning whether the individual was now rehabilitated or reformed from her alcohol dependence. He considered the following factors: the individual had been abstinent for less than half of the three years he originally recommended; she had attended, by his calculation, 30 to 70 hours of AA meetings, of the 150 hours he originally recommended; she was still taking Antabuse, which raises the question of relapse risk if she were to decide unilaterally to stop taking it; her husband was still living in her home, which the individual herself had acknowledged was not good for her sobriety and mental health; and she was not as intensely committed to AA as he felt she should be to be successful. Based on those factors, the DOE psychiatrist stated that he could not lessen his requirements for adequate evidence of rehabilitation or reformation, and concluded that the individual had not yet met those requirements. *Id.* at 103-04.

IV. ANALYSIS

The Notification Letter states that a board-certified psychiatrist evaluated the individual and diagnosed her as alcohol dependent, an illness or mental condition, which causes, or may cause, a significant defect in judgment or reliability. Although the individual has disputed some of the details listed in the Notification Letter that concern her alcohol consumption, she does agree that she is an alcoholic and has been one since 1984, that she was sober from 1986 to 1996, that she had a relapse in 1996 and struggled with alcohol dependence until 2001, and that she has been abstinent again since Thanksgiving of 2001. This derogatory information creates serious security concerns about the individual under Criterion J (alcohol dependence) and Criterion H (illness or mental condition).

Excessive consumption of alcohol, even off the job, raises security concerns because of the possibility that a clearance holder may say or do something under the influence of alcohol that violates security regulations. *See Personnel Security Hearing* (Case No. VSO-0574), 28 DOE ¶ 82,907 (March 13, 2003); *Personnel Security Review* (Case No. VSA-0174), 27 DOE ¶ 83,005, *affirmed* (OSA 1998). In this case, the risk is that the individual's excessive use of alcohol might impair her judgment and reliability to the point that she will fail to safeguard classified matter or special nuclear material. It is appropriate for the DOE to question a person's reliability when that person has a history of consuming alcohol excessively, and has been abstinent for only a relatively short period.

Since there is reliable, derogatory information that creates a substantial doubt concerning the individual's eligibility for access authorization, I need only consider below whether the individual has made a showing of mitigating facts and circumstances sufficient to overcome the DOE's security concerns under Criteria J and H. Because the hearing officer may recommend that an individual's access authorization be reinstated only if it "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 must provide convincing evidence mitigating those security concerns. The individual has not disputed the DOE psychiatrist's opinion as it was presented in the report. The sole issue, then, is whether, in the nine months between the evaluation and the hearing, the individual has achieved adequate rehabilitation or reformation that mitigates the local security office's concerns.

The record reflects the following mitigating facts. Although the DOE psychiatrist questioned its accuracy, the individual's statement that she had been completely abstinent for 16 months at the time of the hearing stands as the only evidence on record of her current involvement with alcohol. Moreover, the individual's sister supports that testimony. Tr. at 91-92. The individual had been attending AA regularly, if not intensively, for about nine months as of the time of the hearing. In addition to AA, she states that she has the emotional support of her mother and her brother, who live nearby, as well as one particular neighbor, should she need them. *Id.* at 83. The DOE psychiatrist testified that the individual was moving in the "right direction" in addressing her alcohol dependence, though he felt her progress was not yet adequate. *Id.* at

105. Finally, her sister testified that the individual would never disclose classified information, “drunk or sober.” *Id.* at 97. 2/

Despite these showings of progress and a healthy frame of mind, my opinion is that the individual has not successfully mitigated the national security concerns raised by the local security office. The DOE psychiatrist set forth in his report his opinion as to what the individual must do to achieve adequate rehabilitation or reformation from her alcohol dependence: three years of abstinence from alcohol if she participates actively in AA, or five years of “absolute sobriety” unaccompanied by any rehabilitation program. The psychiatrist acknowledged that the required periods of sobriety are extremely long, but clearly explained that his recommendations arose from the individual’s history of relapses into alcohol dependence, despite extensive treatment and long periods of sobriety. Based on the evidence presented in this proceeding, I am convinced that his rehabilitation and reformation recommendations are appropriate for this individual.

After hearing testimony of the individual’s progress since his evaluation, the DOE psychiatrist maintained that three to five years of sobriety were still necessary, not only because of her history of alcohol dependence (including periods of sobriety and episodes of relapse), but also because of current circumstances (including her mediocre commitment to AA, her continued use of Antabuse, and her permitting her ex-husband to stay in her residence). I agree with his conclusions. The DOE psychiatrist’s testimony convinces me that the individual’s struggles with alcohol dependence are far from over, and that her current circumstances increase, rather than decrease, the likelihood of relapse. After considering all the evidence in the record, it would be premature for me to find that the individual is rehabilitated or reformed from her alcohol dependence at this time. The individual has not demonstrated in the course of this proceeding that the risk of relapse to excessive alcohol consumption is acceptably low. Consequently, the individual has not mitigated the DOE’s security concerns under Criteria J and H regarding her history of alcohol dependence. Nevertheless, the record of this proceeding demonstrates that the individual is making significant progress against her alcohol dependence. She should be commended for her efforts, and when she achieves the recommended periods of sobriety, she should be encouraged to seek reconsideration of her request for access authorization.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not presented evidence that warrants restoring her access authorization. The individual has not demonstrated that restoring her access

2/ Even with the best of intentions, I do not believe that an individual can reliably control her behavior when intoxicated. That inability to control behavior forms the security concern that underlies both Criterion J and Criterion H. Nevertheless, I accept this assertion to demonstrate the security-conscious nature of the individual.

authorization will not endanger the common defense and will be clearly consistent with the national interest. Therefore, the individual's access authorization should not be restored.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: November 24, 2003