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July 29, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 1, 2009

Case Number: TSO-0725

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for 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." ¹ For the reasons set forth below, I conclude that the individual's security clearance should be restored. ²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was issued a security clearance in connection with that employment. In March 2008, the local security office (LSO) was informed that the individual had enrolled in an alcohol treatment program. Because this information raised security concerns, the LSO summoned the individual for an interview with a personnel security specialist in August 2008. After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, which set forth the results of that evaluation, and sent it to the LSO. After reviewing this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² 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>.

concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 22 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced four exhibits, and presented the testimony of four witnesses in addition to testifying himself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual's Alcohol Usage

The following information was obtained from the DOE psychiatrist's report (DOE Exhibit (Ex.) 13), and is not disputed by the individual. The individual began consuming alcohol at age 14, when he would drink two or three 12-ounce beers approximately once per month. This pattern of consumption persisted until the individual turned 21. During this period, he drank to intoxication, as he defined that term, on four occasions. It would take two to three beers, consumed over the course of one hour, to reach this state.

At the age of 21, the individual's drinking increased. He and a friend would share a "fifth" of whiskey and a 12-pack of beer one night every other weekend, and the individual would become intoxicated on each occasion, approximately halfway through each evening's consumption.

From the age of 24 to 35, the individual's drinking decreased. During this period, he would drink approximately a 12-pack of beer a month with friends, mostly on weekends. He did not drink to intoxication during this time.

In 2004, when the individual was 36, his drinking increased again. He and two friends would drink a half-gallon of whiskey between Friday and Saturday night. The individual could not recall the amount that he drank, but said that he drank the most of the three of them. He would drink to intoxication every Friday and Saturday night.

In January 2007, the individual's drinking increased yet again. He began drinking alone and would consume "a couple" of mixed drinks every weeknight and more on weekends. He would alternate between whiskey and vodka, and would drink approximately three "fifths" of alcohol each week.

In March 2008, the individual's wife left him because of his drinking. Several days later, on March 8 and 9, 2008, the individual drank a gallon of vodka by himself, becoming intoxicated on both days. On March 10, 2008, the individual realized that he needed help, and checked himself into a local alcohol rehabilitation facility. He last consumed alcohol on March 10, 2008.

B. The Notification Letter

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual's judgement or reliability. 10 C.F.R. § 710.8(h). Criterion (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Dependence, with Physiological Dependence, in Early Full Remission, and that this condition causes, or may cause, a significant defect in the individual's judgement or reliability. The Letter also relies on statements made by the individual during the psychiatric evaluation and/or the PSI indicating that his doctor and family members have expressed concern about his excessive alcohol use, that from January 2007 to March 2008, he drove a vehicle five or six times and operated his shop equipment while under the influence of alcohol, and that from 2006 to 2008, he experienced alcoholic blackouts on a weekly basis.

The individual does not contest these allegations. This derogatory information adequately justifies the DOE's invocation of criteria (h) and (j), and raises significant security concerns. Excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline G.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

Since the individual does not dispute the DOE psychiatrist’s diagnosis, the sole issue in this proceeding is whether the individual has demonstrated adequate evidence of reformation or rehabilitation. For the reasons that follow, I find that he has made such a showing.

First, the record indicates that the individual has totally abstained from alcohol usage since March 10, 2008. The individual’s testimony in this regard is supported by that of his wife, his counselor at the alcoholism treatment facility that he patronized, and his friend. Hearing transcript (Tr.) at 56, 17, 37, 46. The individual further testified that it is his intention to never drink alcohol again. Tr. at 52.

In addition, the individual has diligently participated in counseling offered by the alcoholism treatment facility, Alcoholics Anonymous (AA), and his church during this period. After his 30-day stay at the treatment facility, the individual began attending AA, as recommended in the facility’s aftercare treatment program. Tr. at 39, 60. After a period of time, the individual decided to attend meetings at his church of a group of men, many of whom were coping with alcohol and other addictions, instead of AA. Tr. at 60. The individual testified that he preferred the church group meetings because of the atmosphere of “love” and “family” that he experienced there. Tr. at 61. The individual’s counselor testified that she was satisfied with this substitution because she believed that the church group meetings served the same purpose as AA meetings. Tr. at 39, 41. The DOE psychiatrist agreed with this assessment. Tr. at 74. The individual’s wife, who attended Al-Anon meetings while the individual attended AA, testified that the respective church meetings that she and her husband attended were very similar to the Al-Anon and AA meetings. Tr. at 72. The individual’s 16 months of counseling (as of the date of the hearing) are significant evidence of rehabilitation.

The strength of the individual’s support system also leads me to believe that his chances of relapsing are remote. This system consists primarily of his wife and his pastor. The individual’s enrollment in the alcohol treatment program was largely precipitated by his wife’s departure, with the couple’s children, from the marital abode. Once the individual decided to quit drinking, his wife drove him to the treatment facility, and has been involved in Al-Anon and a companion program to the individual’s church group. Tr. at 10, 15, 71-72. The individual’s pastor is a recovered alcoholic, and has done “a lot” of counseling with alcoholics and drug addicts. Tr. at 28, 26. The individual’s wife testified that the pastor telephones the individual and “checks on [him] quite often.” Tr. at 20. The individual testified that he could turn to these two and to friends for support. Tr. at 58.

I also find it significant that the individual’s motivation in maintaining his sobriety is not only his desire to keep his clearance, but also his desire to keep his family and to maintain his health, and his

strong religious faith. Tr. at 50-51. I am therefore not concerned that, once his job status has been resolved, he will return to using alcohol.

Finally, the testimony of the DOE psychiatrist leads me to conclude that the individual has demonstrated adequate evidence of rehabilitation. In her report, the DOE psychiatrist stated that, in order to make this showing, the individual would have to undergo one year of therapy and completely abstain from alcohol usage for two years. DOE Ex. 13 at 12. However, after hearing all of the testimony presented at the hearing, the DOE psychiatrist changed her opinion. She concluded that the individual's honesty, his strong support system, and the lack of any major adverse consequences, such as DUIs, from his previous drinking, justified a departure from the two years of abstinence that she recommended in her report. She found that the individual had demonstrated adequate evidence of rehabilitation, despite having abstained from alcohol use for 16 months. Tr. at 73-74. I agree with the DOE psychiatrist, and I conclude that the individual has successfully addressed the DOE's security concerns under criteria (h) and (j).

V. CONCLUSION

Based on my careful consideration of all the evidence in the record as outlined above, I conclude that the individual has demonstrated that restoring his access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: **July 29, 2009**