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September 30, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 14, 2009

Case Number: TSO-0752

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's access authorization should be restored.¹ For the reasons detailed below, it is my decision that the Individual's suspended access authorization should be restored.²

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the Department of Energy (DOE) may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

¹ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

² Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996 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>.

II. BACKGROUND

The Individual is an employee for a DOE-contractor at a DOE facility. On April 7, 2007, the Individual was arrested and charged with Public Intoxication, Disorderly Conduct and Resisting Arrest. The Individual reported this arrest to his employer and asked that his arrest be reported to the DOE facility's local security office (LSO). The LSO then conducted a Personnel Security Interview (PSI) with the Individual in May 2007. The LSO conducted another PSI with the Individual in October 2007. Subsequently, the LSO also arranged for the Individual to be examined by a DOE-Contractor Psychologist (DOE Psychologist) in October 2008.

Because the PSIs and the DOE Psychologist's examination failed to resolve the derogatory information related to his misuse of alcohol, the Individual's security clearance was suspended and the LSO requested an administrative review regarding the Individual's clearance. The Individual was issued a notification letter on April 16, 2009 (Notification Letter), describing the derogatory information which prevented the LSO from restoring the Individual's security clearance. In the Notification Letter, the Individual was informed that the following facts constituted derogatory information: (1) the Individual's arrest in April 2007 for Public Intoxication, Disorderly Conduct and Resisting Arrest; (2) a report from the DOE Psychologist diagnosing the Individual as suffering from Alcohol Abuse, that included an opinion that the Individual's continued habitual use of alcohol to excess would place the Individual at high risk for bouts of poor judgment; (3) the Individual's decision to continue consuming alcohol despite contrary advice from a DOE-Contractor Psychiatrist in 2000. The Notification Letter stated that these facts constituted derogatory information under both 10 C.F.R. § 710.8(j) (Criterion J) and 10 C.F.R. § 710.8(l) (Criterion L).³

A hearing was held in this matter. At the hearing, DOE presented one witness, the DOE Psychologist. The Individual offered his own testimony, as well as that of his wife, two co-workers (Co-Workers 1 and 2) and his Alcoholics Anonymous (AA) sponsor (Sponsor). The DOE submitted 12 exhibits (Exs. 1-12) for the record. The Individual submitted four exhibits (Ind. Exs. A-D).

III. FACTUAL FINDINGS

The facts in this case are essentially not in dispute. A brief summary is provided below.

Before obtaining a security clearance, the Individual had been involved in a number of alcohol-related misdemeanor arrests between 1986 and 1993.⁴ Transcript of Hearing (Tr.) at 119-24, 132-33; DOE Exhibit (Ex.) 11 at 3.

³ Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion L references information indicating that an individual is "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy. . . ." 10 C.F.R. § 710.8(l).

⁴ These arrests were for various charges, including public intoxication, simple battery, contributing to the delinquency of a minor by being in an automobile (while intoxicated) where the owner allowed the child to operate

As part of the investigatory process regarding his security clearance, the LSO conducted a PSI with the Individual in December 1999 and subsequently sent the Individual to a DOE-contractor Psychiatrist (DOE Psychiatrist) to be evaluated regarding his history of alcohol misuse. Ex. 11. The DOE Psychiatrist, after conducting an examination of the Individual, diagnosed him with “Alcohol Abuse, in full remission.” Ex. 12 (December 1999 PSI); Ex. 11 at 3 (DOE Psychiatrist’s Report regarding the Individual). In making this diagnosis, the DOE Psychiatrist noted that the Individual had greatly reduced his alcohol consumption over the prior several years and believed the Individual’s assertion that he had stopped consuming alcohol in the prior six months. Ex. 11 at 3. He also noted, as support for his evaluation, that the Individual and his wife had been granted custody of his niece by a local court. Ex. 11 at 3. His report also stated that the he would not be concerned about the Individual “in a security setting.” Ex. 11 at 3. During his examination, however, the DOE-Psychiatrist recommended that the Individual not resume consuming alcohol. Tr. at 141.

In April 2007, the Individual was arrested for Public Intoxication, Disorderly Conduct and Resisting Arrest.⁵ The Individual contacted the LSO on the first business day after the incident to inform it of his arrest. Tr. at 10, 130-31. The LSO conducted two PSIs with the Individual in May and October 2007. Ex. 8 (October 2007 PSI); Ex. 9 (May 2007 PSI). The Individual was subsequently referred to the DOE Psychologist for an evaluation. In October 2008, the Individual was examined by the DOE Psychologist. In his evaluative report regarding the Individual (Report), the DOE Psychologist stated that the Individual “requires treatment for his alcohol abuse” and that if the Individual participated in an intensive outpatient program and successfully completed six months of abstinence, the Individual could be reevaluated for eligibility for a security clearance. Ex. 7 at 3. He also stated in his report that, without treatment, “[the Individual] will continue to be active in his habitual use of alcohol and will be at high risk for further self-destructive bouts of poor judgment and legal consequence.” Ex. 7 at 4.

IV. HEARING TESTIMONY

A. Co-Worker 1

Co-Worker 1 met the Individual in 2003 when they were both employed at the DOE facility. Tr. at 9. Regarding the Individual’s dedication to observing security regulations, Co-Worker 1 testified that while working in a building, they discovered a cabinet apparently containing classified documents. The Individual immediately took charge and removed employees from the area and contacted the LSO to take possession of the documents. Tr. at 10. He also expressed his opinion that the Individual was a “good man” and that he trusts the Individual. Tr. at 12. Co-Worker 1 believes he is a good friend of the Individual “at work” but has not been to the Individual’s house. Tr. at 15. He has never seen the Individual consume alcohol, nor has he ever heard the Individual try to interest others in consuming alcohol. Tr. at 16. When asked if his

the vehicle backing out of a driveway, resisting arrests and criminal damage to property. *See* Tr. at 52, 119-24; Ex. 7 at 2. Notification Letter does not reference these arrests as a current concern under Part 710.

⁵ These charges were dismissed pursuant to an agreement with the local prosecutor by which the Individual, in exchange for the dismissal of the charges, would agree to pay court costs. *See* Individual Exhibits (Ind. Ex.) A-D; Ex. 8 at 20-21.

opinion of the Individual's trustworthiness would change if he knew that the Individual had been arrested on multiple occasions in the past, Co-Worker 1 stated "No." Co-Worker 1's opinion of the Individual is based on his observation of the Individual at work and he believes that the Individual has always been fair with him. Tr. at 20.

Co-Worker 1, who is also a pastor, testified that he believes that if the Individual had a problem in his life he would come to him for advice and spiritual guidance.⁶ Tr. at 22-23. As an example of the Individual's willingness to confide in him, Co-Worker 1 recalled when the Individual came to talk to him about the Individual's mother's illness and hospitalization. Tr. at 22.

B. Co-Worker 2

Co-Worker 2, who holds a security clearance, met the Individual in 2006 while they were employed by a contractor at a DOE facility. Tr. at 26, 28. He testified that he never has observed the Individual consume an alcoholic drink or go with others after work to consume alcohol. Tr. at 26, 32. He has never observed the Individual intoxicated at work. Tr. at 32. Because he is currently dating the Individual's sister-in-law, he occasionally meets the Individual and his wife on Saturdays to talk or to go out to dinner. During these occasions, he has never witnessed the Individual consuming alcoholic beverages. Tr. at 33. He has also attended other social events with the Individual where alcohol was offered and at none of these events did he observe the Individual consume alcohol. Tr. at 39. At a "Fourth of July" party at the Individual's lakefront property last year, Co-Worker 2 observed other guests bringing alcohol to the event but that the Individual did not provide alcohol for the party or consume alcohol at the party. Tr. at 41-42.

Co-Worker 2 testified that the Individual, while a foreman, encouraged careful examination of jobs to ensure that they would be performed in a safe manner. Tr. at 33-35. Further, he testified that the Individual's work attendance is "above average." Tr. at 35. When asked if he could provide information that would support a conclusion that the Individual's last alcoholic-related event in 2007 would not be repeated, he testified that the Individual has not consumed alcohol for the year and one-half that he has been close to the Individual and that the Individual has been going to AA meetings for the past "five or six" months. Tr. at 44.

C. Individual's Sponsor

The Sponsor met the Individual at an AA meeting in December 2008 and has known him for eight months. Tr. at 60. He has been the Individual's sponsor in AA for the two months prior to the hearing. Tr. at 60, 65. The Sponsor has been attending AA since January 2006 and currently attends four meetings a week. Tr. at 60-61, 63.

When the Individual asked the Sponsor to be his sponsor, the Sponsor asked the Individual to call him at least five times a week and the Individual has always fulfilled this requirement. Tr. at 65-66. Additionally, the Individual has consistently attended AA meetings. Tr. at 66. In this regard, the Sponsor testified that the Individual's dedication to attending AA meetings on time is such that the Individual will come directly from work in his soiled work clothes rather than to

⁶ The Individual does not attend Co-Worker 1's church in part because of the significant distance between the church and the Individual's residence. Tr. at 23-24.

come late to a meeting. Tr. at 58. In observing the Individual's participation at AA meetings, the Sponsor believes that the Individual has internalized the message in Step 1 of the AA program – that the Individual is powerless over alcohol and his life has become unmanageable. Tr. at 79.

As part of the instruction the Sponsor gave the Individual, he asked the Individual to read the first 164 pages of "The Big Book." Tr. at 66. He is also working with the Individual on the 12 steps of the AA program. Tr. at 66. The Individual is currently working on Step 4 of the program, which entails making a fearless and searching moral inventory of himself. Tr. at 66. The Individual has had some trouble with this step. In working with the Individual on this step, the Sponsor advised him that his inventory should include positive items and not just negative issues. Tr. at 66-67. The Sponsor testified that in all of his interactions with the Individual, the Individual has never appeared intoxicated. Tr. at 71.

D. The Individual's Wife

The Individual's wife testified that she has known the Individual for 27 years and has been married to him for 24 years. Tr. at 84. Between their own biological children and other family members that they have adopted, they have raised eight children. Tr. at 83. She testified that the Individual has never tried to hide his history of alcohol-related arrests. Tr. at 86. During the period where most of the arrests occurred (late 1980s), she would leave the Individual for a week after the incident but would later come back to him. Tr. at Tr. at 86. In 1988, the Individual's wife left to move to another State to care for her father. Tr. at 87. At this time, she gave him an ultimatum to stop his pattern of alcohol-related misconduct or stay away from her. Tr. at 106. He rejoined her in that State and in her opinion, the Individual "straightened up a lot." Tr. at 86. After rejoining her, he became a good provider and helped to care for their children, five of whom were not biologically his. Tr. at 88.

The Individual's wife testified that they do not keep alcohol in their house. Tr. at 91. She occasionally will consume an alcoholic beverage when they go out on social occasions. Tr. at 91. The last time they were out in a restaurant that served alcohol the Individual consumed only sweet tea. Tr. at 91.

As of the date of the hearing, she and the Individual are caring for three minor children, for whom they have been appointed guardian by a court. Tr. at 94. She and the Individual have talked to them about the trouble that one can get into from alcohol use. Tr. at 93. The Individual participates in these discussions and tells his children of the trouble he has encountered from alcohol misuse. Tr. at 93.

The Individual's wife was present with her husband at the restaurant where the Individual's 2007 arrest occurred. Tr. at 95. Her initial reaction at the incident was anger but her anger dissipated when she discovered that a person had physically attacked one of her "sons" (a nephew) and the Individual had jumped into the fight to "pull someone off" her son. Tr. at 95. At the restaurant, the Individual had consumed five alcoholic drinks over the period of two and one-half hours. Tr. at 95. At the time of the incident, she did not consider the Individual to be "falling out drunk" but acknowledged that he was "impaired." Tr. at 96.

Since the date of the April 2007 arrest, the Individual's wife has not seen him consume alcohol. Tr. at 96. At no time has the Individual's wife been absent from seeing the Individual for a period longer than 24 hours. Tr. at 97. The Individual is usually absent from home only to work and to go to AA meetings. Tr. at 97. Further, since she maintains the family finances, she would know if income was going to purchase alcohol. Since April 2007, the Individual has not used any of his income to purchase alcohol. Tr. at 103-04.

While the Individual's wife will occasionally consume alcoholic beverages, she has never observed the Individual being resentful over her consumption of alcohol. Tr. at 109. She has informed him that she would be willing to totally abstain from alcohol but that the Individual does not feel it is necessary. Tr. at 109.

The Individual's wife testified that she believes that the Individual is "committed" to participation in AA. Tr. at 100. When she asked him why he was still attending AA after the six months recommended by the DOE Psychologist, he informed her that he liked AA and that he believed it was helping him. Tr. at 100. She believed that he was sincere in his belief concerning AA. Tr. at 100. While she does not believe that he had an alcohol problem, the Individual has firmly told her that he believes he has an alcohol problem and that he needs AA. Tr. at 112.

E. The Individual

The Individual testified as to his history of alcohol-related arrests during the period 1986-1993. Tr. at 119-23. None of the arrests resulted in jail time longer than 24 hours and all were misdemeanor offenses. Tr. at 124-25. The Individual also testified as to his April 2007 arrest for public intoxication, resisting arrest and disorderly conduct, his report of the incident to DOE, and the subsequent dismissal of these charges. Tr. at 125-31.

The Individual's current period of abstinence from alcohol began in April 2007 immediately after the arrest. Tr. at 133. He has not had any desire to consume alcohol for the past two years. Tr. at 133. Further, his intention is to never consume alcohol again, with the assistance of regular AA meeting attendance. Tr. at 149.

He attributes his lack of desire for alcohol to the extra time he has been spending with his grandchildren and his attendance at AA. Tr. at 134. He believes that he would not have considered attending AA if not for the recommendation of the DOE Psychologist. Tr. at 134. While the DOE Psychologist issued his recommendation in October 2008, the Individual did not find an AA group sufficiently close until January 2009. Tr. at 146-47.

He testified that when his difficulties began in 1986, he did not realize that he had an alcohol problem. Tr. at 134. Once he consumed one or two beers he would then continue to drink until he had consumed all of the available beer. Tr. at 135. Thereafter, he would abstain from alcohol for a period, but then he would repeat his previous pattern of consumption. Tr. at 135. While he knows that many people, like his wife, can have an alcoholic drink or two and quit, he is incapable of such moderation. Tr. at 137. He does not believe that he has specific triggers that lead him to consume alcohol. Tr. at 136. His alcohol consumption is directed from an inward desire to consume alcohol. Tr. at 136. This desire is part of his illness of alcoholism and he wants to take care of his "sickness." Tr. at 136. He plans in this regard are:

I'm going to manage it. Just like people manage their blood pressure, just like people manage their high cholesterol, I found a cure and I'm going to keep taking it. It does not matter.

Tr. at 136.

The key components of his treatment plan are his family and AA. Tr. at 136. His plan is to continue to go to AA indefinitely, despite the fact he has completed the six month period recommended by the DOE Psychologist. Tr. at 135, 137. He will also continue to go to AA even if his security clearance is not granted. Tr. at 135. Since attending AA, he finds that his life is better and that he does not have to deal with the possibility of going to jail and paying fines and court costs. Tr. at 135.

F. DOE Psychologist

The DOE Psychologist testified as to his examination of the Individual in October 2008. Tr. at 159. During his examination, the DOE Psychologist came to the conclusion that the Individual was forthcoming regarding the facts that led to his referral. Tr. at 159. He formed the opinion that the Individual had a "diagnosable condition" of alcohol abuse. Tr. at 159. As part of his examination, the DOE Psychologist suggested to the Individual that his problems had arisen from alcoholism and not from "stupidity." Tr. at 160. The Individual gave an indication that he was willing to accept this explanation for his problems. Tr. at 160. Given this acceptance, the DOE Psychologist formed an optimistic prognosis for his Report on the Individual. Tr. at 160. In this regard, he believed that the Individual was be a "very comfortable match" for AA. Tr. at 160. The six month recommendation contained in his report was not meant to be a fixed determination of rehabilitation, but an adequate period where the Individual's "credibility in AA" could be evaluated. Tr. at 162.

After listening to the testimony of all the witnesses, the DOE Psychologist testified that he has a great deal of experience with the AA program and that he believed that the Individual "credibly demonstrated" his involvement with the Sponsor. Tr. at 161. He believes that the Individual has "authentically identified" with the AA approach to living. Tr. at 161. For a person such as the Individual, AA is an important and gratifying part of their life. Tr. at 164. Such participation "meets all of the medical requirements of dealing with an alcohol issue." Tr. at 164.

Another favorable factor for the Individual was his history of taking responsibility. Tr. at 162. The DOE Psychologist noted that the Individual had to quit high school in the 11th grade at age 16 to help support his family. Tr. at 162-63. The responsibility he showed was remarkable at his age, especially given that the Individual's father died when the Individual was 10 years old and the Individual grew up in "a very troubled family system." Tr. at 162.

Given the above facts and determinations, the DOE Psychologist determined that the Individual has also demonstrated a stable and credible sobriety. Tr. at 163. He believes that the Individual, as of the date of the hearing, has "an alcohol diagnosis" but is now in a sustained remission. Tr. at 163. Further, because of the Individual's credible involvement in AA, the testimony of the witnesses, and his current abstention from alcohol for 27 months, he believes that the Individual

has demonstrated adequate evidence of rehabilitation and reformation from his alcohol disorder. Tr. at 166.

V. ANALYSIS

The Criteria J and L derogatory information in this case centers on the Individual's excessive alcohol consumption. The April 2007 arrest occurred when the Individual was under the influence of alcohol by consuming five alcoholic beverages in a span of a couple of hours. Essentially all of the Individual's arrests have resulted when the Individual has been under the influence of alcohol. Likewise, the Individual's failure to heed the DOE Psychiatrist's advice in 2000 to stop consuming alcohol is closely related to his alcohol problem.

An individual suffering from an alcohol problem raises security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0221 (February 16, 1999). Likewise, criminal activity creates doubt as to 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 or regulations. *See* "Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information" issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (DOE Adjudicative Guidelines), at Guideline J. Given the DOE Psychologist's finding that the Individual suffered from Alcohol Abuse and the Individual's arrest in April 2007, the local security office had more than sufficient grounds to invoke Criteria J and L. The Individual believes his demonstrated abstinence from alcohol and efforts in treatment with AA have mitigated the concerns raised by his Alcohol Abuse. I agree.

I find the testimony of the Individual, his wife, the Sponsor, the Co-Workers, and the DOE Psychologist to be convincing. I find that the Individual has, as of the date of the hearing, an abstinence period of 27 months (April 2007 to July 2009). While impressive, this, in itself, would not be sufficient for me to conclude that the security concerns have been resolved, especially in light of the fact that the Individual has previously demonstrated the ability to reduce or stop consuming alcohol and to avoid alcohol-related problems for an extended period of time (1993-2007). Significantly, I find that the Individual has internalized the fundamental message that he has an alcohol problem and that it requires on-going active treatment. The Individual's Sponsor has confirmed the depth of the Individual's commitment to AA. The Individual's wife also provided persuasive evidence confirming the Individual's abstinence period and his commitment to AA. Her testimony also demonstrates the Individual's overall integrity and willingness to undertake responsibility.

The DOE Psychologist's testimony supports a finding that the security concerns in this case have been resolved. He is in a unique position, since he evaluated the Individual before he undertook treatment through AA and had an opportunity to review the Individual's progress as of the date of the hearing. His testimony confirms the depth of the Individual's commitment to AA. In his opinion that the Individual is rehabilitated himself from his alcohol problem, he noted the Individual's involvement in AA, his current period of abstinence, and the supporting information provided by the witnesses as support for his opinion that the Individual has successfully rehabilitated himself from his alcohol problem. I find the DOE Psychiatrist's opinion to be well supported and convincing.

Given the expert testimony of the DOE Psychologist, the Individual's demonstrated period of abstinence from alcohol of 27 months, the Individual's commitment to AA and the other supporting testimony provided in this case, I find that the Criteria J and L security concerns raised by the Individual's excessive use of alcohol and his April 2007 arrest have been resolved.

VI. CONCLUSION

As explained above, I find that the security concerns under Criteria J and L related to the Individual's diagnosis of Alcohol Abuse and April 2007 arrest have been resolved. I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: September 30, 2009

