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October 27, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 24, 2009

Case Number: TSO-0774

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for a DOE access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's request for a DOE access authorization should be granted. For the reasons detailed below, it is my decision that the Individual's request for access authorization should be not be granted at this time.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization.² See Notification Letter, May 13, 2009.

The Notification Letter cites issues pertaining to the Individual's alcohol use as security concerns under 10 C.F.R. §§ 710.8 (h) and (j) (Criteria H and J, respectively).³ According to the Notification Letter, a DOE consultant-psychiatrist ("the DOE Psychiatrist") evaluated the Individual in February 2009 and determined both that the Individual's alcohol consumption "constitute[d] a pattern of using alcohol habitually to excess" and the Individual met the criteria for "Alcohol Dependence, with Physiological Dependence, in Sustained Partial Remission." *Id.*; see also DOE Ex. 6. The DOE Psychiatrist further concluded that the Individual did not demonstrate adequate evidence of rehabilitation or reformation. DOE Ex. 6. The DOE Psychiatrist recommended that in order to demonstrate adequate evidence of rehabilitation or

¹ 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>.

² Access authorization, also known as a 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.

³ Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to conduct indicating that the Individual has "been, 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).

reformation from his alcohol dependence diagnosis, the Individual should seek out a treatment program such as Alcoholics Anonymous (AA) or individual substance abuse counseling, as well as maintain abstinence from alcohol consumption for a period of at least two years. *Id.* In addition to the diagnosis by the DOE Psychiatrist, the Notification Letter notes that the Individual was diagnosed with Alcohol Dependence by a counselor in July 2008, and attended an alcohol treatment facility in late 2004, where he was diagnosed as being alcohol dependent. *Id.* Finally, the Notification Letter indicates that the Individual was arrested for Driving Under the Influence (DUI) in March 2007. *Id.*

Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual's Hearing Request, June 5, 2009. At the hearing, the Individual, represented by counsel, presented his own testimony, as well as the testimony of his fiancée, his father, his two brothers, two friends, his team leader, and his co-worker. The DOE counsel presented the testimony of one witness, the DOE Psychiatrist.⁴

II. HEARING TESTIMONY

A. The Individual

The Individual last consumed alcohol in March 2009, six months prior to the hearing. Hearing Transcript ("Tr.") at 162. After his February 2009 evaluation by the DOE Psychiatrist, the Individual did not believe he had "a dependency problem," but he realized that alcohol was causing problems for him and was not something he needed in his life. Therefore, he made a conscious decision to stop drinking. Tr. at 164-66. He no longer associates with the people with whom he used to go out drinking. Tr. at 164. The Individual never felt that he was unable to stop drinking alcohol. Tr. at 166.

Although he attended an alcohol treatment program in 2004, he never felt he had an alcohol problem. Tr. at 181-82. He attended the treatment program because family members expressed concern to him over the effect of alcohol on his health and he wanted to alleviate their concerns. Tr. at 183. He was diagnosed as alcohol dependent in 2004 by the counselors at the treatment facility. Tr. at 183. He recognized that he abused alcohol on occasion, but never felt he was at a point where he could not abstain from alcohol use. Tr. at 170, 184-85. The Individual also attended court-ordered alcohol treatment in 2008 following his 2007 DUI arrest. Tr. at 182. He stated that the counselor diagnosed him with Alcohol Dependence because she "need[ed] to put down something that shows [he was] there." Tr. at 182. He did not agree with the diagnosis. *Id.*

The Individual has not sought any recent alcohol-related treatment because he does not feel he needs help in dealing with his alcohol use. Tr. at 168. He began seeing a counselor two or three months prior to the hearing to help him better manage anxiety and stress. Tr. at 164, 190. The Individual stated that he used to drink when under stress, but no longer uses alcohol to deal with stressful situations. Tr. at 174. The Individual stated that his counselor told him that, although he may have had an alcohol problem in the past, he does not currently meet any criteria for alcohol dependence. Tr. at 192, 198.

⁴ Both the Individual and the DOE Counsel submitted exhibits into the record. The Individual's exhibits are lettered Indiv. Exs. A-G; the DOE Counsel's exhibits are numbered DOE Exs. 1 - 12.

Since abstaining from alcohol use, the Individual has not felt a desire to drink. Tr. at 167. The Individual does not intend to drink alcohol again in the future. Tr. at 166, 190. He is confident that he can refrain from drinking alcohol even in stressful situations. He added that his family and friends are a strong support system for him. Tr. at 197.

B. The Individual's Fiancée

The Individual and his fiancée have known each other for six years and have lived together for two and one-half years. Tr. at 22. The Individual stopped drinking alcohol about six months prior to the hearing. Tr. at 24, 28. The Individual's fiancée expressed concern to the Individual about his alcohol use around the time of his DUI arrest, in March 2007. Tr. at 22. Prior to March 2007, the Individual drank socially a few times per week. Tr. at 23. Following the DUI, the Individual "changed his habits to where he was only drinking on weekends," did not go out as much, and stopped associating with certain people. *Id.*, 30. The Individual decided to quit drinking alcohol because "he decided that it was better for him." Tr. at 29.

According to his fiancée, the Individual never thought he had an alcohol problem, but he recognized that his alcohol use caused problems for him with his DUI arrest and the current administrative review proceeding. Tr. at 29. She added, however, that alcohol has not negatively affected the Individual's life beyond those two instances. *Id.* The Individual is not currently attending any alcohol-related treatment. Tr. at 33. However, despite not believing he has an alcohol problem, the Individual attends counseling sessions in order to help him cope with stress. Tr. at 32. He used to deal with stress by drinking, but has learned other coping mechanisms. *Id.* For example, if the Individual now feels stressed, he and his fiancée watch movies or play computer games together, go out to dinner with friends, or try to do something relaxing. Tr. at 46. They had undergone stressful situations in the recent past, such as the burglary of their home, and the Individual did not drink. Tr. at 47.

The Individual and his fiancée spend most of their time together, given that they both work and live together. Tr. at 24. In their free time, they socialize with the Individual's brothers, their friends, go out to dinner, and watch movies and sports. Tr. at 25. There is alcohol present at some of their social outings, but the Individual has not "gone anywhere near it" since he stopped drinking alcohol. Tr. at 25. The Individual's fiancée added that she drinks on occasion and there is alcohol present in their home, but the Individual does not drink it. Tr. at 34.

C. The Individual's Family

The Individual's father believes the Individual's alcohol consumption was "more of a social event than anything else" and that it mostly took place on the weekends. Tr. at 64. In 2004, the Individual's father was concerned about the Individual's alcohol use and encouraged him to enter an in-patient treatment facility to explore whether he had an alcohol problem and address it if he did. Tr. at 64-65. There was no one specific event which led to the Individual's father's concern; rather, he became concerned about the Individual's "life trajectory." Tr. at 66. His recommendation to the Individual of the treatment facility was a precautionary measure. *Id.* The Individual's father has not seen the Individual drink alcohol in several years. Tr. at 70. The Individual told his father that he made a conscious decision to stop drinking because his work is much more important to him than alcohol. Tr. at 78, 84. The Individual's father believes the

Individual never felt he had an alcohol problem, but recognized that alcohol was causing problems for him. Tr. at 78-79.

Both of the Individual's brothers see him regularly. Tr. at 88, 113. They interact at family events, go out to dinner, watch movies, or otherwise spend time together. Tr. at 113. Neither of the Individual's brothers has seen him consume alcohol in several years. Tr. at 90, 114. The Individual's brothers noted that the Individual's drinking decreased in the past five years, following his alcohol treatment program in 2004, and became occasional social drinking. Tr. at 93, 116. The Individual expressed regret over his DUI and is "a different person" as a result of the arrest. Tr. at 95, 118. His drinking habits drastically decreased after the 2007 DUI arrest. Tr. at 95. The Individual's younger brother expressed concern to the Individual in the past over his alcohol use because he was worried about the Individual's health. Tr. at 92, 109-10. When the Individual returned from the alcohol treatment facility in 2004, he acknowledged to his younger brother that he had an alcohol problem and was working on resolving it. Tr. at 103. The Individual's older brother believes the Individual had an alcohol problem in the past, but he has addressed it. Tr. at 119.

According to his brothers, the Individual decided to quit drinking and stated that he does not intend to drink in the future because alcohol has caused him too many problems. Tr. at 106, 122. The Individual has faced stressful situations recently, such as the serious illness of his fiancée's mother, and has not turned to alcohol to help deal with the stress. Tr. at 97. The Individual spends most of his free time with his fiancée. Tr. at 108. They added that the Individual spends most of his free time watching television or playing computer games. Tr. at 107-08, 118.

D. The Individual's Friends

Friend 1 is a friend of the Individual's fiancée and has known the Individual for three years. Tr. at 51. They socialize together frequently. Tr. at 52. Friend 1 has seen the Individual consume alcohol, but has never seen the Individual intoxicated. Tr. at 52. She added, "when I've seen him drink, it's only been a couple of beers." *Id.* Friend 1 has not seen the Individual drink in "at least a year." Tr. at 53. Friend 1 had heard from the Individual's fiancée that the Individual sometimes "overdrank." Tr. at 54-55. However, she believes it has been at least six months since the Individual stopped drinking alcohol. Tr. at 56. She was in the Individual's home a few days prior to the hearing and did not see any alcohol. Tr. at 55. The Individual does not go out to bars. Tr. at 58. He spends most of his free time at home or with his family, watching movies or playing computer games. Tr. at 57-58.

Friend 2 met the Individual ten years ago through work; they have been friends for five years. Tr. at 146. Friend 2 does not drink and would not be friends with the Individual if he felt the Individual drank alcohol excessively. Tr. at 148. He sees the Individual often and has never seen the Individual consume alcohol. Tr. at 149, 151. The Individual told Friend 2 that he quit drinking alcohol because he would rather keep his job than drink. Tr. at 154. The Individual told Friend 2 that "he's probably never going to drink [alcohol] again." Tr. at 155. Friend 2 has socialized with the Individual at locations that serve alcohol and the Individual has not ordered alcohol. Tr. at 155. Friend 2 also added that the Individual spends his free time watching movies and playing computer games. *Id.*

E. The Individual's Work Colleagues

The Individual's team leader and co-worker have known him since he began his current position, approximately two years ago. Tr. at 13, 135. They described the Individual as "exceptional," "very technically skilled," and "very professional." Tr. at 13, 136. They both see the Individual daily at work, and have not noticed any problems in his work performance which could be attributed to excessive alcohol use, such as going to work intoxicated or missing work. Tr. at 14, 138. The Individual's team leader has never seen the Individual consume alcohol. Tr. at 14. His co-worker has socialized with the Individual and seen him drink alcohol, but has never seen him intoxicated. Tr. at 137. Within the six months prior to the hearing, the Individual and his co-worker have socialized at locations where alcohol was served, but the Individual did not drink any alcohol. Tr. at 144.

F. The DOE Psychiatrist

The DOE Psychiatrist diagnosed the Individual with Alcohol Dependence without Physiological Dependence. Tr. at 215. The DOE Psychiatrist recommended that the Individual attend meetings of Alcoholics Anonymous (AA) and obtain a sponsor, as well as undergo a treatment-related psychiatric evaluation. Tr. at 222. In addition, the Psychiatrist recommended that the Individual establish a minimum of two years of abstinence from alcohol. Tr. at 223.

As of the time of the hearing, the DOE Psychiatrist believed the Individual had made some progress in addressing his alcohol problem, namely by abstaining from alcohol for six months and attending counseling sessions to help manage his anxiety and stress. Tr. at 228, 257. However, she believed that the Individual did not yet demonstrate adequate evidence of rehabilitation or reformation. *Id.* In that regard, the DOE Psychiatrist was concerned that, despite having been diagnosed with alcohol dependence during the 2004 treatment program and in her February 2009 report, the Individual never felt he had a problem with alcohol and still did not think he had a problem despite acknowledging that he may have abused alcohol in the past. Tr. at 227. She believes the Individual has poor insight into his alcohol dependence. *Id.* She believed that the Individual's level of insight was the same at the hearing as during her initial evaluation. Tr. at 257. The DOE Psychiatrist noted that "time is a very important factor" and the Individual had not been abstinent from alcohol for a long enough period of time as of the hearing to demonstrate adequate evidence of rehabilitation or reformation. Tr. at 230. She concluded that the Individual's risk of relapse within the next five years remained "moderate." Tr. at 228.

III. STANDARD OF REVIEW

The regulations governing the Individual's eligibility for an access authorization are set forth in 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such 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). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the

interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the 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). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The 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). In order to reach a favorable decision, the Hearing Officer must find 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.” 10 C.F.R. § 710.27(a).

IV. ANALYSIS

The derogatory information in this case centers on the Individual’s past alcohol use, as well as the DOE Psychiatrist’s diagnosis that the Individual met the criteria for alcohol dependence. It is well-established that a diagnosis of an alcohol disorder raises security concerns because “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” 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) (the Adjudicative Guidelines), Guideline G, ¶ 21. *See also Personnel Security Hearing*, Case No. TSO-0678 (2008). Given the facts in this case, particularly the DOE Psychiatrist’s diagnosis, the LSO had sufficient grounds to invoke Criteria H and J. The remaining issue is whether the Individual has presented sufficient evidence to adequately mitigate the security concern.

In this case, I am persuaded that the Individual has been abstinent from alcohol for six months as of the date of the hearing. In addition, he testified that he intends to remain abstinent from alcohol. He no longer associates with the individuals with whom he used to go out drinking. Further, he is attending counseling sessions to help him cope with stress, which he used to manage by drinking alcohol. The Individual’s testimony was corroborated by the testimony of his fiancée and friends. Each of those witnesses testified that the Individual told them he was giving up alcohol because his job is more important to him than alcohol. His fiancée and brothers noted that, prior to his abstinence from alcohol in March 2009, the Individual’s alcohol consumption had decreased over the past several years and he was only drinking socially on the weekends. The Individual also seems to have a strong support network in his family and friends that will help him remain abstinent if he chooses to do so.

Despite the foregoing, I find that the Individual has not mitigated the security concerns raised by his past use of alcohol. While the Individual’s six-month period of abstinence is a positive

factor, it is clear that the Individual undertook the abstinence from alcohol in order to enhance his ability to obtain a security clearance and, therefore, protect his job, rather than as a result of any real recognition that he had a problem with alcohol. Despite being diagnosed with some form of alcohol dependence three times – in 2004, 2008, and 2009 – the Individual still maintains that he does not have an alcohol problem, although he acknowledges that alcohol was causing problems for him in his life. In this regard, I agree with the opinion of the DOE Psychiatrist that the Individual’s insight into the role alcohol played in his life is poor.

In addition, the Individual has not undertaken any meaningful alcohol-related treatment, as recommended by the DOE Psychiatrist. He attended a treatment program in 2004 to satisfy his family and another in 2008 to satisfy his legal obligations following his DUI arrest. However, he has not undertaken any alcohol-related treatment without some external pressure motivating him to do so. Taking these factors into consideration, the DOE Psychiatrist concluded that the Individual’s risk of relapse in the next five years is still elevated at a “moderate” level. In my view, that risk remains unacceptably high. It is clear that, although the Individual has taken some positive steps toward treating his alcohol problem, he still has a long way to go in his recovery. Based on this information, I cannot find that the demonstrated period of abstinence is sufficient to mitigate the security concerns in this case. I agree, therefore, with the DOE Psychiatrist’s testimony that this period of abstinence and treatment is not yet sufficient to show adequate rehabilitation or reformation. Consequently, as the foregoing indicates, I find that the Individual has failed to mitigate the security concern set forth in the Notification Letter under Criteria H and J regarding the his alcohol use.

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised doubts regarding the Individual’s eligibility for a security clearance under Criteria H and J. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that granting the Individual’s request for 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). Accordingly, I find that the Individual’s request for DOE access authorization should be denied at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: October 27, 2009