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November 5, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 21, 2009

Case Number: TSO-0786

This Decision concerns the eligibility of XXXXXXXXXXXX (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 September 2008, the individual was arrested for Aggravated Driving While Intoxicated and Careless Driving. Upon being informed of this arrest, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in January 2009. After this Personnel Security Interview (PSI) failed to resolve the security concerns that were raised by the arrest, 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

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>.

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 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 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced one exhibit, and presented the testimony of five witnesses in addition to testifying himself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual's Alcohol Usage and Related Events

The following information was obtained from the DOE psychiatrist's report (DOE Exhibit (DOE Ex.) 3), and is not disputed by the individual. The individual began consuming alcohol at age 12, when he would "sneak a drink here and there." DOE Ex. 3 at 2. At age 17, the individual joined the armed forces, and over the next four years, he drank at least a six-pack of beer per day, and would become intoxicated about once per week after drinking two six-packs. After leaving the armed forces, the individual's alcohol consumption dropped. At the beginning of his employment with the DOE contractor in 1979, he would drink an average of one beer per night during the week, and on one weekend evening twice per month, he would drink two six-packs. This level of consumption would leave him "pretty buzzed but not intoxicated," which he defined as "stumbling around drunk." *Id.* at 3. This pattern of drinking continued for approximately 30 years.

In August 1997, the individual and his wife began arguing while she was driving them home after a visit with the individual's terminally-ill mother. After she refused to stop and let the individual out of the vehicle, he struck her in the face with the back of his hand. The individual's wife then stopped, and the individual exited the vehicle and began walking home. When the police arrived, they arrested the individual for Battery and Domestic Violence. He later informed the DOE that he had consumed a six-pack of beer throughout the day of the arrest, DOE Ex. 9, and he admitted to the DOE psychiatrist that this drinking contributed to his inability to control his temper. DOE Ex. 3 at 3.

After he turned 50 years of age at the beginning of 2008, the individual began drinking whiskey in addition to beer. On an average of once per week, he would consume a six-pack of beer and a pint of whiskey with friends. On the evening of his September 2008 arrest, the individual drank a six-pack of beer and a pint of whiskey over the course of four-to-five hours at a friend's house. While driving home, he failed to negotiate a curve, and his vehicle left the road. When the police arrived at the scene, they administered a Breathalyzer test to the individual. After measuring the individual's blood alcohol content at 0.16, twice the legal limit for driving in the individual's state, the police arrested the individual.

The individual reported this arrest to the DOE contractor. In October 2008, the individual was referred to a psychologist in the employ of the contractor for an evaluation as to his fitness to return to work. That psychologist (hereinafter referred to as “the individual’s psychologist”) diagnosed the individual as suffering from Alcohol Abuse, and he was required to undergo random, unannounced Breathalyzer tests and was referred to the contractor’s Employee Assistance Program (EAP). The individual began meeting with his EAP counselor on a weekly basis, and began attending Alcoholics Anonymous (AA) twice a week. The individual reported last consuming alcohol on November 6, 2008, approximately six months prior to the DOE psychiatrist’s evaluation, and reported last drinking to intoxication on the night of his September 2008 arrest. His intention is to refrain from all future alcohol use.

B. The Notification Letter and the DOE’s Security Concerns

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 paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

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 this criterion, the Letter cites the diagnoses of the DOE psychiatrist and the individual’s psychologist that the individual suffers from Alcohol Abuse, the individual’s two alcohol-related arrests, and his abusive levels of alcohol consumption since the beginning of 2008.

This derogatory information adequately justifies the DOE’s invocation of criterion (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

The individual does not dispute the diagnoses of Alcohol Abuse. Therefore, the sole issue in this proceeding is whether he has demonstrated adequate evidence of reformation or rehabilitation. For the reasons that follow, I find that he has made such a showing.

The most compelling factor in the individual’s favor is that each of the three expert witnesses who testified at the hearing concluded that the individual’s prognosis is good, and that his chances of relapsing into alcohol usage are low. The individual’s psychologist testified that he has met with the individual on a monthly basis since November 2008 to check on his progress and to discuss issues relating to his continued sobriety. Hearing Transcript (Tr.) at 25-26. He continued that the individual’s attitude has improved over time, from one exhibiting “a bit of denial” at first, to one that is now “clearly in line with somebody who is committed to sobriety.” Tr. at 27.

The EAP counselor testified that even though the individual was only required to meet with him eight times as of the date of the hearing, he had had, at the individual’s request, 26 meetings with him during this period. Tr. at 35. The individual has been “very insightful and cooperative,” *id.*, and is one of the EAP counselor’s “better clients.” Tr. at 44. The EAP counselor further stated that the individual has passed all 83 of the random Breathalyzer tests that have been administered to him, and he is satisfied that the individual is not drinking. Tr. at 37.

In his report, the DOE psychiatrist concluded that, in order to show adequate evidence of reformation or rehabilitation, the individual would have to continue his current treatment program (monthly meetings with the individual’s psychologist, weekly meetings with the EAP counselor, weekly AA attendance, and regular, unannounced Breathalyzer tests at work) for a period of one year from November 6, 2008, the date of his last usage of alcohol. DOE Ex. 3 at 11. The hearing was held approximately 11 months after that date. Nevertheless, after witnessing all of the testimony, the DOE psychiatrist concluded that the individual was demonstrating adequate evidence of reformation or rehabilitation. Tr. at 74-75. The individual’s psychologist and the EAP counselor concurred in this assessment. Tr. at 30, 40. In support of his conclusion, the DOE psychiatrist testified that the individual “has demonstrated a very good commitment to his sobriety.” Tr. at 70. He further noted that, although his motivation for initially seeking treatment was external in nature (*i.e.*, the likelihood of losing his job), the individual was now internally motivated to maintain his sobriety because he could see how it had improved his life. Tr. at 74-75.

I was also favorably impressed with the strength of the individual's support system, and of his commitment to abstinence. The individual's contention that he attends an average of two AA meetings per week is supported by the testimony of his wife and his AA sponsor, Tr. at 12, 51; *see also* Individual's Exhibit 1. The individual's wife testified that she "encourages" him in his recovery, Tr. at 16, and that, if the individual started drinking again, she would talk to him about it, and would then contact the individual's sponsor. Tr. at 21. The individual's sponsor testified that he attends the AA meetings with the individual, and then confers with him after the meetings. Tr. at 48. He further stated that they are actively working through the AA's 12 step program. Tr. at 49. The individual testified that he "feels a lot better physically and mentally" since he has stopped drinking, and that his marriage is "way better now." Tr. at 63. He further stated that, for him, AA attendance is a "lifetime commitment," Tr. at 66, and that he intends to continue to refrain from all alcohol usage. Tr. at 68. Based on the foregoing, I conclude that the individual's chances of relapsing into Alcohol Abuse are acceptably low, and that he has successfully addressed the DOE's security concerns under criterion (j).

V. CONCLUSION

After carefully considering all of 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: November 5, 2009