

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 2, 2002
Case Number: VSO-0536

This Opinion concerns whether xxxxxxxxxx (hereinafter "the Individual") is eligible for access authorization. As explained below, I have concluded that the Individual has not demonstrated his eligibility for access authorization at this time.

I. THE APPLICABLE REGULATIONS

The Department of Energy (DOE) regulations governing this matter are set forth at 10 C.F.R. Part 710. Those regulations describe the criteria and procedures for determining eligibility for access to classified matter or special nuclear material, i.e., "access authorization" or a "security clearance."

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). Certain types of derogatory information raise an issue whether an individual is eligible for a clearance. 10 C.F.R. § 710.8. The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information. 10 C.F.R. § 710.7(a), (c). Such information includes the nature of the conduct at issue, 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 purpose of a hearing is to give an individual an opportunity to resolve any identified security concerns. 10 C.F.R. § 710.21. Thus, the burden is on the individual to present

testimony or evidence to demonstrate that he is eligible for access authorization, i.e., that 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(a). As this standard indicates, there is a presumption against the grant of a security clearance. See 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"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Because this standard is designed to protect the national interest, it differs from the standard applicable to criminal proceedings in which the prosecutor must prove guilt beyond a reasonable doubt.

II. BACKGROUND

In August 2001, a DOE security specialist interviewed the Individual. See DOE Exhibit ("Ex.") 8. The purpose of the interview was to discuss information relevant to the Individual's eligibility for a security clearance. The information included a past diagnosis of alcohol dependence and a September 2000 conviction for driving while intoxicated (DUI). The Individual indicated that he continued to drink and become intoxicated, although on a much less frequent basis. Based on the foregoing information, DOE security referred the Individual to a DOE consultant psychiatrist (the DOE psychiatrist) for an evaluation.

In September 2001, the DOE psychiatrist interviewed the Individual and issued a report. DOE Ex. 10. The DOE psychiatrist diagnosed the Individual as a user of alcohol habitually to excess and suffering from alcohol abuse, which caused or could cause a defect in judgment or reliability. DOE Ex. 10, at 5. The DOE psychiatrist advised the Individual to enter an alcohol recovery program. *Id.*

In February 2002, DOE notified the Individual that doubts remained about his eligibility for a clearance. DOE Ex. 4. The notification letter cited the psychiatric diagnosis as derogatory information under 10 C.F.R. § 710.8(j) (Criterion J) and 10 C.F.R. § 710.8(h) (Criterion H). In response to the notification letter, the Individual requested a hearing.

III. THE HEARING

The DOE presented two witnesses: the security specialist and the DOE psychiatrist. The Individual testified and presented the testimony of six witnesses: five colleagues and his Alcoholics Anonymous (AA) sponsor. Their testimony is discussed below. The Individual also submitted voluminous documentary evidence concerning his current alcohol recovery efforts and his work history. The hearing transcript is cited as "Tr."

A. The Individual

The Individual identified some factual inaccuracies in the DOE psychiatrist's report, but the Individual did not dispute that he had an alcohol problem. Tr. 139. Although the Individual testified that he no longer craved alcohol, he stated that he was an alcoholic and "I will be an alcoholic until I die." Tr. 119, 129. The Individual's testimony largely concerned his recovery program.

The Individual testified that after his DUI arrest, he completed his court-approved alcohol program, and he submitted documentation of that completion. Ind. Exs. I through M. The Individual testified that, although that program did not cause him to stop drinking, he reduced his drinking and his experience with the program contributed to his subsequent decision to open himself to treatment. Tr. 134-137.

The Individual testified that in May 2002 he entered into an Employee Assistance Program (EAP) agreement with his employer, under which his employer agreed to help pay for a treatment program and the Individual committed to specified alcohol recovery efforts. The Individual submitted a copy of the agreement, which is signed by the employer's medical director and the Individual. Ind. Ex. A. The agreement provides for a 28-day intensive treatment program, followed by group counseling for one year, and individual counseling, AA attendance, alcohol abstinence, and random alcohol tests for two years.

The Individual testified that he completed the 28-day treatment program, and he provided supporting documentation. See, e.g., Ind. Exs. C, F. The attending physician described the Individual's prognosis as "good." See Ind. Ex. F.

The Individual testified that since his completion of the 28-day program, he has been involved in a comprehensive after-care

program. Consistent with the EAP agreement, the program consists of group and individual counseling, AA attendance, abstinence, and random alcohol tests. See, e.g., Tr. 122-125, 150-152. Although the EAP agreement provides for AA attendance at least three times per week, the Individual testified that he participates almost daily in AA meetings or AA-related activities. Tr. 124-125. In addition, the Individual testified that, although not required by the EAP agreement, he takes antabuse. Tr. 122, 150. See Ind. Ex. G. Finally, the Individual's documentation of his recovery efforts include his AA attendance sheets, Ind. Ex. H, and the results of the random alcohol tests, Ind. Ex. E, which all support his testimony.

The Individual testified that his recovery program is going very well. He testified that he is more active socially and is enjoying dinners, movies, and home and outdoor activities. Tr. 125-126, 140. The Individual testified that he was seeing the benefits of sobriety ("there's lots of good stuff already happening") and that he was "optimistic" about his future, regardless of the outcome of the administrative review proceeding. Tr. 152.

B. The Individual's AA Sponsor

The Individual's AA sponsor testified concerning his knowledge of the Individual's recovery efforts. The AA sponsor testified that he is in close touch with the Individual: they speak to each other at least once a day and see each other at AA meetings. Tr. 102, 109. The AA sponsor testified that he is working with the Individual on the 12 steps and that the Individual is committed to recovery. Tr. 102, 106-107.

C. The Individual's Colleagues

The Individual's workplace colleagues testified concerning their knowledge of the Individual's work performance and his recovery efforts. They consisted of two current supervisors, a mentor, and two other colleagues, one of whom is also a social friend.

All of the colleagues described the Individual's work performance in glowing terms. One supervisor described the Individual as "outstanding" with "impeccable" accountability and reliability. Tr. 66. The second supervisor described the Individual as his "best" worker. Tr. 77. The Individual's mentor described him as "outstanding," and emphasized that the

word "outstanding" is reserved for exceptional performance. See Tr. 85.

All of the colleagues testified that the Individual has discussed his alcohol recovery program with them. One supervisor testified that the Individual reported the insights that he had achieved; the supervisor described the Individual as having a "much more positive outlook," and "a kind of happiness." Tr. 73. The second supervisor testified that the Individual had eliminated unnecessary work-related stress, which resulted in "marked improvement . . . in his life and what's going on in his mind." Tr. 80. The Individual's mentor testified about the Individual's "dedication" to his recovery program. Another colleague, who has had experience with family members with alcohol problems, described the Individual as being more "patient" and "temperate" since the start of his recovery program. Tr. 95-96. Finally, the Individual's colleague and friend commented positively on the Individual's increased social interaction. See Tr. 115.

D. The DOE Psychiatrist

The DOE psychiatrist listened to the testimony of the Individual, his AA sponsor, and his workplace colleagues. The DOE psychiatrist testified that he viewed the Individual as a "high-functioning alcoholic," i.e. someone whose alcohol consumption had not adversely affected workplace performance. Tr. 164. The DOE psychiatrist cautioned, however, that even though an alcohol problem had not affected an individual's performance at work, that did not mean that it could not do so in the future. Tr. 165.

As for the Individual's recovery program, the DOE psychiatrist viewed it as "more than the standards . . . quite a full program." Tr. 162. The DOE psychiatrist testified that he no longer saw "denial . . . the number one obstacle to recovery" and that he was "impressed" with the Individual's openness about his problem, stating that such openness did not usually happen until a later point in treatment. Tr. 166.

Concerning the outlook for the Individual's recovery, the DOE psychiatrist testified that it was too early to conclude that the Individual was rehabilitated. As an initial matter, the DOE psychiatrist testified that the Individual's history indicated a "guarded" prognosis. The DOE psychiatrist pointed out, however, that the Individual's attending physician had given the

Individual a "good" prognosis. Tr. 167-69, citing Ind. Ex. F. The DOE psychiatrist testified that he would defer to that prognosis, since the attending physician had greater familiarity with the Individual. Tr. 167-168. In the final analysis, however, the DOE psychiatrist indicated that it was too early to conclude that the Individual was rehabilitated, noting that the minimum standard for remission was one year. Tr. at 168.*/

IV. ANALYSIS

As indicated above, the Individual does not dispute the facts giving rise to the security concern. The Individual describes himself as an alcoholic, and he is participating in an alcohol recovery program. The question here is whether the Individual has resolved the concern about his past alcohol use.

The Individual has established that he is fully engaged in a comprehensive alcohol recovery program and that he is committed to sobriety. The Individual's program involves individual and group counseling, AA involvement, and random alcohol testing. Although the Individual's program does not require him to take antabuse, he does so. The Individual's AA involvement exceeds the requirements of his program: in fact, much of the Individual's free time is spent at AA meetings and AA-related organization and recreational activities. The Individual has been abstinent since the beginning of his program: the Individual testified to that effect and his negative random alcohol tests, his daily AA attendance, and the testimony of his witnesses persuade me that he has been abstinent. Finally, the Individual has openly discussed his program and his positive outlook with others. The DOE psychiatrist described the Individual's program as going beyond the standard and being very full.

Although the Individual has demonstrated his progress and commitment, that demonstration does not establish that he is rehabilitated. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol related

*/ The medical director, who is the Individual's counselor, was unable to testify at the hearing. The Individual was given the opportunity to have the medical director file a letter, but did not do so.

disorders, but instead makes a case-by-case determination based on the available evidence, with substantial deference accorded to the expert opinions of psychiatrists and other mental health professionals.

In this case, the Individual has not established rehabilitation. The Individual is only three months into his program, and the DOE psychiatrist did not view three months as sufficient. See Tr. 168. The Individual did not present any expert testimony to the contrary. Accordingly, although at this point the Individual is fully engaged in a comprehensive recovery program and committed to sobriety, it is too early to conclude that he is rehabilitated.

I recognize that the Individual has placed emphasis on the evidence that his past alcohol use did not affect his job performance and that he has been an outstanding employee. That is certainly favorable evidence but it is not sufficient, even when coupled with the Individual's success in the early stage of his recovery program, to resolve the security concern. Excessive alcohol use raises a security risk; as the DOE psychiatrist testified, Tr. 165, the fact that excessive alcohol use has not resulted in a security problem in the past does not guarantee that it will not do so in the future. See, e.g., Personnel Security Hearing, Case No. VSA-0174, 27 DOE ¶ 82,751 at 85,507 (1998). Accordingly, once an individual's alcohol use gives rise to a security concern, the individual must demonstrate rehabilitation from that use. As indicated above, although the Individual has demonstrated his commitment to a full recovery program, the undisputed expert testimony is that the Individual's three month involvement in a recovery program and abstinence is not of sufficient duration to conclude that the Individual is rehabilitated at this time.

V. SUMMARY AND CONCLUSION

The Individual has established that, since mid-May, he has been fully engaged in a comprehensive alcohol recovery program and has been abstinent. It is too early, however, to conclude that the Individual is rehabilitated. Because the security concern remains unresolved, I am unable to conclude that 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 conclude that the Individual should not be granted access authorization at this time.

Janet N. Freimuth
Hearing Officer
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Date: