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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0069

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

I. BACKGROUND

In April 2003, the Manager of a Department of Energy (DOE) Operations Office issued a Notification Letter to the individual, stating that the DOE was in possession of derogatory information that created a substantial doubt concerning her continued eligibility for access authorization. In the Notification Letter the Operations Office also informed the individual that she was entitled to a hearing before a hearing officer in order to respond to the information contained in the Notification Letter. The individual requested a hearing in this matter and the Operations Office forwarded this request to the Office of Hearings and Appeals. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (hearing).

The Notification Letter finds security concerns related to the individual's behavior under Criteria F, H, J, K & L. 10 C.F.R. § 710.8(f), (h), (j) (k) & (l). Criterion F security concerns relate to falsification. Criterion H security concerns relate to a finding of a mental condition, which, in the opinion of a psychiatrist causes or may cause a significant defect in judgment. Criterion J security concerns relate to the use of alcohol habitually to excess or a diagnosis of alcohol abuse or dependence. Criterion K security concerns relate to the use of illegal drugs. Criterion L security concerns relate to unusual conduct or circumstances which indicate a lack of reliability.

The Notification Letter bases the Criterion H, J and K concerns on an October 20, 2002, report by a DOE consulting psychiatrist. In that report the consulting psychiatrist diagnosed the individual as suffering from alcohol dependence and marijuana abuse. He also found that the individual is a user of alcohol habitually to excess. The report also finds that the individual's alcohol dependence and marijuana abuse may cause a significant defect in her judgement.

The Notification Letter indicated that the Subpart F falsification concern is based on the individual's statement on a Questionnaire for National Security (QNSP) dated July 7, 1998 that she had not in the last five years used illegal drugs. The Notification Letter indicates that during a personnel security interview (PSI) and a psychiatric evaluation she admitted that she had used marijuana on several occasions before and after signing the QNSP. ^{1/}

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer. As discussed below, once a security concern has been raised, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning her eligibility for access authorization, and requires the hearing officer to base all findings relevant to their eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting her eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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).

^{1/} The Notification Letter also indicated that the individual engaged in unusual behavior under 10 C.F.R. § 710.8(l) (Criterion L). In specifying the facts supporting the Criterion L concern, the Notification Letter indicates "See Criteria H and J." Because the behaviors that formed the basis for the Criterion L security concern were all related to alcohol and marijuana misuse, I made a tentative determination that the finding of a Criterion L security concern should be dismissed. The DOE counsel agreed with my preliminary determination. Accordingly, no further consideration will be given to the Criterion L security concern.

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995).

B. Basis for the Hearing Officer's Decision

It is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of 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). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. CRITERION J CONCERN

The record in this case indicates that on April 6, 2002 at 6:30 P.M. the individual was under the influence of alcohol and caused a three car accident that resulted in injuries to the passengers in the other cars. As a result of reporting the accident and arrest to the DOE security office, she participated in a PSI and was then referred to a DOE consulting psychiatrist for an evaluation. As stated above, the consulting psychiatrist diagnosed the individual as alcohol dependent. The individual admits that she has a serious problem with the consumption of alcohol. Thus, the issue I must consider is whether the individual has shown rehabilitation from alcohol dependence.

A. Testimony

The following individuals testified about the individual's sobriety since April 2002 and her rehabilitation efforts.

1. The DOE Consulting Psychiatrist

The DOE consulting psychiatrist's testimony was received in two parts. Prior to hearing the individual and the witnesses, he testified about his interview and his evaluation of the individual. As part of his 2002 evaluation he diagnosed the individual as suffering from alcohol dependence.

Transcript of Hearing (hereinafter Tr.) at 17. 2/ The consulting psychiatrist's report stated that during the evaluation the individual described in detail her AA activities and her decision in April 2002 to cease consuming alcohol. He testified that he believed that the individual had a strong commitment to AA and that her statements that she had not consumed alcohol since April 2002 were true. Tr. at 17. However, at the time of the evaluation, October 2002, the consulting psychiatrist believed the individual had not had a sufficient period of abstinence to be considered rehabilitated.

After listening to all the testimony, including that of the individual herself, the DOE consulting psychiatrist gave some additional testimony. He stated "the question I'm asked is are you showing adequate evidence of rehabilitation and reformation. So my one-word answer would be, yes." Tr. at 109. He indicated that he is familiar with AA and is very impressed with the individual's 21 month participation in AA and that the individual is "doing all the right things for all the right reasons." Tr. at 110.

2. The Individual

The individual testified that her April 2002 traffic accident and arrest for driving under the influence of alcohol (DUI) was a "life-changing event." Tr. at 31. She testified that she has not consumed any alcohol since April 2002. Tr. at 36. In addition to not consuming alcohol she stated "as the fog cleared, I became aware of the enormity of the mistakes I had made and the work I needed to do." Tr. at 32. She started attending AA in April 2002. As a result of those meetings she began to realize that sobriety was not just abstaining from alcohol but being "clean and sober." Tr. at 32. She was formulating these insights at the time of her October 2002 interview with the DOE consulting psychiatrist. During that psychiatric interview she told the DOE psychiatrist that her April traffic accident had led her to join AA and to understand what she needs to do to stay sober for the rest of her life. Tr. at 33.

The individual testified in detail about her activities involving AA. She indicated after completing 90 meetings in 90 days, she reduced the number of meetings she was attending. Tr. at 86. However, after attending meetings less frequently for a short period she realized "it was easy to stay in a positive frame of mind if I attended meetings daily . . . and that is the only way that I can share or return the gift that I've been given is to show up and essentially welcome the newcomers, to be present and to participate." Tr. at 86. "You gain knowledge, perspective, coping skills by continuing to participate." Tr. at 91. She has sponsored two new AA members and is currently chairing the 10 A.M. Sunday AA meeting at a local recreation center. Tr. at 86.

She indicated she is still working the 12 step program and is currently on step 11. Tr. at 90. The 12 steps are a continual process and she believes she is now better able to handle problems in her life. She stated that "the way to deal with problems is to communicate feelings and thoughts and to not take it personally when I disagree with someone." Tr. at 92. She indicated that the AA process

2/ His report is dated October 20, 2002 and is included in the record of this proceeding as DOE Exhibit #1.

is one that requires looking at a character defect and that such introspection is a life long process. She plans to work the program for the rest of her life. Tr. at 94.

3. The Individual's Husband

The individual's husband testified that they have been married for fifteen years but they have been separated for two years. He testified that before April 2002 the individual drank frequently and more than she should have. Tr. at 40. He currently sees his wife twice a week in activities related to their two children. Tr. at 39. He also sees her occasionally at social occasions hosted by mutual friends. Tr. at 42. He indicated that he has seen her at various times of the day including early morning and late night and he visits her with and without advance notice. Since April 2002 he has never seen her drink alcohol. Tr. at 51.

He testified that prior to April 2002 the individual kept beer in the house but his observations during the many times he has been in her house since April 2002 indicate that there has not been any alcohol in her home since then. Tr. at 52. He indicated that the individual has done an outstanding job at stopping the use of alcohol. Tr. at 40. Finally, he testified that he does not believe his wife will consume alcohol in the future. Tr. at 51.

4. The Individual's Father

The individual's father testified that he sees the individual several times a week. Tr. at 60. Before April 2002 he believed his daughter was having problems and that she was abusing alcohol. Tr. at 63. However, he indicated that since she started attending AA his daughter is more communicative and they have a better relationship. Tr. at 60. He does not believe she is currently consuming alcohol because he no longer senses stress in her life and he has seen nothing in her house or in her attitude that would suggest to him that she is not maintaining her sobriety. Tr. at 62. Her father believes the individual now has a clearer definition of where her focus should be. "Less maybe thinking of [herself] as a victim and more of [her] responsibilities to other people. I think . . . [the individual has] cleared up her vision, and I think she has a course and speed now." Tr. at 58.

5. The AA Sponsor

The individual's AA sponsor testified that since April 2002 he has known the individual in his sponsorship role. He sees her at meeting on a regular basis and he often talks with her on the telephone. Tr. at 71. In that sponsorship role he shares his experiences and the philosophies of AA with the individual in order to help her maintain her sobriety. Tr. at 69. He has watched the individual "trudge the path of recovery with honesty and earnestness." Tr. at 69.

He indicated that the individual has not used alcohol since April 2002 and that he would be aware of any relapses. Tr. at 71. His experience as a sponsor of 12 people indicates that when a person relapses, he does not communicate; he does not have an active relationship with his sponsor. He testified that the individual has been and continues to be very open and communicative. Tr. at 76.

He testified that the individual and he continue to meet and talk on the telephone and that he believes she is committed to the AA program and to sobriety. Tr. at 80.

6. AA Friend

The friend testified that she has known the individual for about six months and that in addition to AA activities they socialize on a regular basis. Tr. at 81. In order to explain why she believes the individual is genuinely working hard to maintain her sobriety, she pointed out that when someone is genuinely working the program, "they have conflicts, they resist, it is not easy. They will not always want to do things." Tr. at 82. However, if a person is just trying to get out of trouble people tend to be compliant and go along. Tr. at 82. She believes the individual is successfully overcoming the problems associated with a change in her life style. She testified that she socializes with the individual regularly and that the individual is honestly working hard and is maintaining her sobriety. Tr. at 82.

B. Analysis

I am convinced by the testimony of the individual, her friends and family that the individual has not consumed alcohol since April 2002 and that she is committed to sobriety in the future. The testimony was very clear that the individual has been deeply involved and committed to AA for 20 months. The testimony of the other members of AA also indicated that the individual has a strong, firm commitment to sobriety.

I found the DOE consulting psychiatrist's opinion that the individual is rehabilitated to be convincing. The changes in the individual's attitudes and behavior related to alcohol are clear and I have therefore determined that the individual has mitigated the DOE security concern relating to alcohol dependence and use of alcohol habitually to excess (Criterion J). For the same reasons, I also find that the Criterion H security concern that alcohol dependence may cause a defect in the individual's judgment has been resolved.

IV. CRITERION K CONCERN

During the October 2002, psychiatric evaluation the individual told the DOE consulting psychiatrist that she had used marijuana and that she had provided false information on her QNSP about her use of marijuana. Tr. at 32. The DOE consulting psychiatrist testified that as a result of the individual's report of marijuana use he diagnosed her as suffering marijuana abuse.

With respect to the use of marijuana, the individual testified that she used marijuana recreationally some 10 to 20 times a year prior to 2002. She also testified that she used marijuana one last time in May 2002. I am convinced that the individual has demonstrated that she has not used marijuana for 20 months and that she is committed to not using marijuana in the future. Her commitment to the AA program and to living a life that is both alcohol and drug free is clear. Therefore, I believe that the DOE security concern related to her marijuana use (Criterion K) has been mitigated. Further,

for the reasons indicated above with respect to Criterion J, I find that the Criterion H concerns regarding drug abuse have been resolved.

V. CRITERION F CONCERN

The individual's failure to disclose her marijuana use on her 1998 QNSP and during her April 2002, PSI raise a falsification concern under Criterion F. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See e.g., Personnel Security Hearing (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995), 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995); Personnel Security Hearing (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), aff'd, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000). Therefore, I must look at the statements of the individual, the facts surrounding the falsification and the individual's subsequent history in order to assess whether the individual has rehabilitated herself from the falsehood and whether restoring the security clearance would pose a threat to national security. See Personnel Security Hearing (Case No. VSO-0327), 27 DOE ¶ 82,844 (2000), aff'd, Personnel Security Review, 28 DOE ¶ 83,005 (2000) (affirmed by OSA, 2000); Personnel Security Hearing (Case No. VSO-0418), 28 DOE ¶ 82,795 at 85,705 (2001). In the end, like all Hearing officers, I must exercise my common sense judgment whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c)(5).

The individual testified that she was working the fourth step in AA at the time she met with the DOE consulting psychiatrist in October 2002. The fourth step is "a searching and fearless inventory." Tr. at 32. After discussions with her sponsor she realized that "you need to look at are you being honest with yourself? And I found that I was not." Tr. at 32. "So I had these ideas when I went to speak with the [DOE consulting psychiatrist]. And he pretty much cornered me into divulging the additional facts that I hadn't shared originally." Tr. at 32. "I had this perception that it was time for me to be completely honest. And I did that." Tr. at 32.

The individual recognizes that prior to her October 2002 disclosure she failed to provide accurate information to the DOE about her marijuana use. She testified that she will be truthful and honor her commitments in the future. Tr. at 129. She believes that her honesty since her October 2002 admissions and the insights she has gained through AA should convince me that she will be forthcoming in the future.

The testimony indicates to me that the individual's AA rehabilitation efforts have changed her attitudes about honesty as well as drug and alcohol use. The key issue is whether the individual has brought forward sufficient evidence to demonstrate that she can now be trusted to be consistently honest and truthful with the DOE in the future. In considering this question, I find that the nature of the individual's falsifications was serious. Lying on the form that supplies the information on which a security clearance is granted and lying during a PSI subvert the integrity of the access authorization process. The individual knowingly and intentionally provided false information on her 1998 QNSP, and continued the falsification during her April 2002 PSI.

Balanced against these negative factors is the fact that after working through her AA program, the individual did disclose her marijuana use during both her October 2002 psychiatric evaluation and October 29, 2002 PSI. Since October 2002 she has been candid and forthcoming with regard to her use of marijuana. This individual has demonstrated a change in her attitude toward drugs and alcohol. By disclosing the information to the DOE she has shown a change in her attitude regarding honesty about the problems in her life. Her recognition of the need for honesty came in October 2002, some 15 months before the Hearing. Since that time she has been open and candid with the DOE and I found her to be forthcoming at the hearing.

This is a close case. However, on balance I believe the information presented here indicates that 15 months is a sufficient period to mitigate this individual's failure to provide the DOE with accurate information about her recreational drug use. I believe that the individual has changed her attitude about falsification and it is unlikely that this individual will again attempt to mislead the DOE.

VI. CONCLUSION

I have concluded that the individual has mitigated the DOE security concerns under 10 C.F.R. § 710.8. In view of the record before me, I am persuaded that restoring the individual's 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 access authorization should be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker
Hearing Officer
Office of Hearings and Appeals

Date: March 12, 2004