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May 4, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 27, 2009

Case Number: TSO-0703

This decision concerns the eligibility of XXXX X. XXXXX (hereinafter referred to as "the Individual") to maintain an 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 This decision considers whether, on the basis of the evidence in this proceeding, the Individual's security clearance should be restored. For the reasons stated below, I find that the Individual's security clearance should be restored.

I. BACKGROUND

On May 2, 2007, the Individual was arrested for Driving While Intoxicated (DWI). The Individual had previously been arrested for DWI on April 1, 1988. After it was notified of the May 2, 2007, DWI, the Local Security Office (LSO) conducted a personnel security interview (PSI) of the Individual on July 1, 2008.² This PSI failed to resolve the security concerns raised by his two alcohol-related arrests. In fact, additional derogatory information concerning the Individual was obtained during this PSI. During this PSI, the Individual admitted that he had consumed five alcoholic beverages on November 24, 2007, in violation of his probation. The Individual also admitted drinking to excess, driving while intoxicated on approximately 20 occasions, and arriving late to work because of hangovers on two occasions.

At the LSO's request, the DOE consultant psychiatrist (the DOE Psychiatrist) conducted a forensic psychiatric examination of the Individual on September 18, 2008. Exhibit 12 at 1. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On September 24, 2008, the DOE Psychiatrist issued a report (Report) in which he opined that the Individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth

¹ An 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 an access authorization or a security clearance.

² The transcript of this PSI appears in the record as Exhibit 25.

Edition-Text Revised (DSM-IV-TR). *Id.* at 8. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed from his alcohol abuse. *Id.* at 10.

Accordingly, the LSO initiated an administrative review proceeding and issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). *See* 10 C.F.R. § 710.9. The Notification Letter specified derogatory information described in 10 C.F.R. § 710.8(j).³ Specifically, the Notification Letter alleges that the Individual suffers from alcohol abuse, has a history of two alcohol-related arrests, had consumed five alcoholic beverages on November 24, 2007, in violation of his probation, admitted drinking to excess, had operated a motor vehicle while he was intoxicated on approximately 20 occasions, and had arrived late to work because of hangovers on two occasions.

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on January 28, 2009. At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual and seven other witnesses. *See* Transcript of Hearing, Case No. TSO-0703 (hereinafter cited as "Tr."). The LSO submitted 26 exhibits, marked as Exhibits 1 through 26, while the Individual submitted 19 exhibits, marked as Exhibits A through S.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or 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 have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the

³ The Notification Letter alleges, in relevant part, that the Individual has: "Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as . . . suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J).

testimony and exhibits presented by both sides in this case.

III. THE SECURITY CONCERN AT ISSUE

As noted above, the sole security concern at issue is Criterion J. The LSO relied on the DOE Psychiatrist's diagnosis of alcohol abuse, the Individual's two alcohol-related arrests, his consumption of alcoholic beverages in violation of his probation, his operation of a motor vehicle while intoxicated on approximately 20 occasions and his admission that he had engaged in excessive alcohol consumption throughout his adult life, as justification for invoking this criterion. Alcohol abuse and excessive alcohol consumption often lead 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 by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines), Guideline G at 10.*

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Individual acknowledges that he has habitually used alcohol to excess and suffers from alcohol abuse. Tr. at 22. Accordingly, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation and reformation to resolve the security concerns raised by his habitual use of alcohol to excess and alcohol abuse. After considering all of the evidence in the record, I find that he has done so.

The DOE Psychiatrist opined in his Report that the Individual would need to participate in an "outpatient treatment of moderate intensity for a period of one year in order to provide adequate evidence of rehabilitation or reformation." DOE Exhibit 12 at 10. The DOE Psychiatrist defined "moderate intensity" as a treatment regime such as SMART or Alcoholics Anonymous once per week, or substance abuse counseling on a frequency determined by his counselor. *Id.* The DOE Psychiatrist further opined that the Individual would need to abstain from using alcohol for "a minimum of one year." *Id.* The testimony of the Individual, his sister, his close friend and his counselors has convinced me that the Individual has exceeded the DOE Psychiatrist's treatment recommendations.

The Individual's testimony convinced me that he had recognized that he has a problem with alcohol and had taken appropriate actions to address his alcohol abuse. The most important action taken by the Individual to address his alcohol abuse has been his decision to permanently abstain from his use of alcohol. The Individual's last use of alcohol occurred on November 24, 2007. At the hearing, the Individual testified that it had been 473 days since his last drink. Tr. at 118. The Individual also testified that he is committed to permanently abstaining from the use of alcohol. *Id.* at 35-36. The testimony of the Individual's sister and a close friend corroborated this testimony.

The Individual has sought treatment for his alcohol abuse from several complementary sources.⁴ Since May 18, 2007, he has been seeing a counselor for individual psychotherapy. Tr. at 26-27. The Individual attends group therapy for an hour and a half each week. *Id.* at 27-28. Since October 2008, the Individual has been attending Alcoholics Anonymous (AA) meetings on a weekly basis.⁵ The Individual's testimony has convinced me that his treatment for alcohol abuse has been effective. During his testimony, it became obvious that the Individual has gained recognition of the negative effects that alcohol has had on his life and an understanding of the factors that led him to abuse alcohol.⁶

The Individual's counselor (the Counselor) testified on his behalf. The Counselor's testimony was highly favorable to the Individual. The Counselor testified that she is a Licensed Professional Clinical Counselor, a Licensed Substance Abuse Associate, and a Licensed Alcohol and Drug Abuse Counselor. Tr. at 109-110. The Individual has been receiving psychotherapeutic services from her since May 12, 2007. *Id.* at 110. Noting that the Individual is in "full sustained remission," she testified that his "prognosis is great . . . [and] improving." *Id.* at 133-134, 136. The Counselor testified that the Individual has acknowledged his alcohol abuse and become aware of how alcohol affects him and others, and has accordingly made positive changes in his behavior. *Id.* at 115-116. The Individual now realizes he needs to permanently avoid alcohol. The Individual has also moved towards an internal "locus of control" so he is less likely to be influenced by peer pressure. *Id.* at 116. The Counselor noted that the Individual had "a huge heightened awareness in his behavioral choices." *Id.* at 124. She states that the reports she receives from the Facilitator of the Relapse Prevention Group, discussed below, are very encouraging. *Id.* at 125. The Counselor testified that the Individual's maintenance of sobriety for fourteen months is evidence of his reformation. *Id.* at 120.

The Facilitator of the Individual's Relapse Prevention Group (the Facilitator) also testified on the Individual's behalf. The Facilitator's testimony was highly favorable to the Individual. The Facilitator testified that the Individual has attended every weekly session of his group since October 2008. Tr. at 142. The Facilitator testified that the Individual brings to the group "a very positive attitude." *Id.* The Individual now realizes he has abused alcohol and "stays clean" and is strong and very determined to stay sober. *Id.* at 147-148. The Facilitator believes that the Individual is making excellent progress and is highly unlikely to relapse. *Id.* at 143. Specifically, he testified that there is a less than 10 percent chance that the Individual will relapse. *Id.* at 151.

⁴ The Individual testified that he had received 15 hours of treatment from his counselor, attended 34.5 hours of his relapse prevention support group and attended 28 hours of AA meetings. Tr. at 40. The Individual also attended a DWI class and a victim's impact class. *Id.* at 45-46.

⁵ The Individual is not working the 12-Steps program under AA and has not obtained an AA sponsor. Tr. at 25, 49-50. In view of the treatment that Individual has received and continues to receive, none of the expert witnesses that testified at the hearing were concerned that this factor might detract from the Individual's sobriety.

⁶ For example, the Individual testified that he was using alcohol as "a crutch to talk to women" and now recognizes that some friends, places and music are "triggers" for his alcohol abuse. Tr. at 19.

The DOE Psychiatrist's testimony was also highly favorable to the Individual. The DOE Psychiatrist was present during the entire hearing and testified after the other witnesses concluded their testimony. He testified that the Individual has now provided adequate evidence of rehabilitation and reformation. Tr. at 173. The DOE Psychiatrist testified that after he reviewed the Individual's security file and conducted his examination of the Individual, he concluded that the Individual suffered from alcohol abuse. *Id.* at 156. He based this conclusion primarily on the Individual's two DWI arrests. The DOE Psychiatrist testified that the Individual barely qualified for the alcohol abuse diagnosis when he first examined him in September 2008. *Id.* at 156, 162-163. However, when the DOE Psychiatrist examined the Individual he only had 10 months of sobriety. *Id.* at 157-158. The DOE Psychiatrist believes that an Individual generally needs a full year of sobriety in order to establish reformation or rehabilitation. *Id.* at 159. Even though the Individual had 10 of the 12 months of sobriety the DOE Psychiatrist believes is generally necessary, the Individual had used alcohol in violation of his probation (10 months earlier), did not yet fully recognize that he had an alcohol problem and was in a relationship with a woman who did not fully support his sobriety. *Id.* at 157-161. The DOE Psychiatrist testified that the Individual's alcohol abuse diagnosis has expired, since the Individual has now been alcohol free for 14 months. *Id.* at 165. Among the factors cited by the DOE Psychiatrist in favor of the Individual's rehabilitation and reformation are the Individual's increased involvement in AA, his motivation to keep his job, and his realization that his relationships were undermining his sobriety. *Id.* at 170-172.

After carefully weighing all of the evidence in the record, including the testimony of the DOE Psychiatrist, I am convinced that the Individual recognizes that he suffers from alcohol abuse, is fully committed to his recovery and has provided sufficient evidence of reformation and rehabilitation. Accordingly, I am convinced that the risk that the Individual will return to alcohol use is acceptably low. I therefore conclude that the Individual has resolved the security concerns regarding his alcohol abuse.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense 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.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: May 4, 2009