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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: March 18, 2003
Case Number: TSO-0023

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (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 not be restored.

I. BACKGROUND

In February 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 his continued eligibility for access authorization. In the Notification Letter, the operations office also informed the individual that he 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).

In the Notification Letter, the operations office indicates that the individual omitted significant information about his military service with the United States Air Force from his answers to a

Questionnaire for National Security Position (QNSP). 1/ Specifically, on that QNSP he answered Question 16 (Your Military History) by indicating he had never served in the military. His answer to Question 11(List Your Employment Activities) did not include a statement about any military service. Finally, his answer to Question 21(Your medical Record) indicated he had never consulted a mental health professional. The notification letter also indicates the individual failed to provide information about his military service and consultations with a psychiatrist on two other occasions. The first was during a March 2002 psychological assessment that was part of a DOE accelerated access authorization program, and the second was during an April 2002 background interview with an FBI agent. The Notification Letter states that such omissions constitute a security concern under 10 C.F.R. §710.8(f)(hereinafter Criterion F). 2/

The Notification Letter also indicates that the individual engaged in unusual behavior that shows he is not reliable or trustworthy. The behavior specified in this notification letter is that the individual faked a suicide attempt in order to convince the Air Force to release him from his enlistment. According to the Notification Letter such conduct constitutes a security concern under 10 C.F.R. §710.8(l)(hereinafter Criterion L).

Finally, the notification letter indicates that the individual has a past history of an adjustment disorder and that such a disorder constitutes a security concern under 10 C.F.R. §710.8(h) (hereinafter Criterion H).

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 his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this 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

1/ The individual signed the QNSP on January 23, 2002. The QNSP is included in the record of the proceeding as DOE Exhibit #10. (hereinafter DOE Exhibit #10).

2/ The security specialist testified that the individual's failure to report items correctly on his QNSP indicated that this document could not be relied upon and "his truthfulness, his honesty was brought into question." Transcript of Hearing (hereinafter Tr.) at 11.

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 his 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 his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest."

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 his 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

In a personnel security case under Part 710, 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, commonsense 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. FACTUAL BACKGROUND

In order to understand the testimony and arguments presented at the Hearing, it is necessary to have an overview of the facts surrounding the individual's enlistment in the United States Air Force. The individual's high school permitted him to graduate six months early to enlist in the Air Force. The individual graduated one month after his 18th birthday. As part of his pre-enlistment process, the

individual and an Air Force representative signed a document entitled “Guaranteed Training Enlistment Agreement.” Individual exhibit #3. The agreement indicated that the individual was “guaranteed training and a first regular duty assignment in AFS (Air Force Specialty) security apprentice.”

On February 17, 1999, the individual enlisted in the Air Force and was sent to Lackland Air Force base for the basic training required of all enlistees. DOE exhibit #14. As a normal part of the basic training process the individual completed a background questionnaire. On that questionnaire the individual revealed that when he was 15 years old he had made a suicide gesture by making superficial cuts on his wrists. ^{3/} On the basis of his report of a suicide gesture, his expressed unhappiness with military life and his superior’s belief that the individual might be depressed, the individual was referred to the Lackland medical center’s behavior service for a mental health evaluation. The evaluation report is dated February 23 and signed by a Captain. The report indicates the individual was having difficulty sleeping, his motivation for training was low and that he wanted to go home. The report concludes that the individual’s difficulties appeared to be within normal limits for an enlistee in the early stages of training and that the individual should continue his basic training. The report also finds that on the basis of the individual’s report of a suicide gesture when he was 15, the individual should be disqualified from training as a security apprentice.

Soon after the evaluation the individual was informed that he would not be receiving training as a security apprentice. The individual was very unhappy with the news and tried to avail himself of the right he believed he had under paragraph 2 of the Guaranteed Training Enlistment Agreement. Paragraph 2 of the Guaranteed Training Enlistment Agreement specifies:

2. If I am disqualified from training to the apprentice skill level through no fault of my own and for reasons other than academic deficiency, I may be involuntarily discharged from the Air Force. If the Air Force does not discharge me, I may choose to (a) . . . or (b) request separation from the Air Force.

The Air Force told the individual that he would not be discharged and that he would be required to complete his 6-year enlistment. The individual became despondent. He wrote a letter requesting that the Air Force separate him. The Air Force rejected his request.

In order to try to obtain a discharge the individual made some superficial cuts on his arms. After speaking with the chaplain on March 5 the individual was evaluated for a second time at Lackland’s behavior medical service. The March 5 evaluation report determined a degree of psychological

^{3/} The superficial cuts did not require medical attention.

disturbance sufficient for an immediate hospitalization. DOE Exhibit # 18. During the four-day hospitalization the individual was evaluated by the psychiatric staff and he attended group counseling sessions with the other patients. The March 7 evaluation report written by a Major, Staff of the Inpatient Psychiatric Service, indicated the individual did not have a medically disqualifying psychiatric condition. However, the report indicated the individual has an adjustment disorder which impairs his ability to function in the military. The report recommended the individual receive an entry level separation. DOE Exhibit #17. On March 10 the individual was informed that he would be discharged. On March 18, 1999, he received an “entry level separation.” DOE Exhibit #15.

IV. HEARING TESTIMONY

At the Hearing the individual testified on his own behalf and he presented the testimony of 12 additional character witnesses. There was also testimony from the DOE consulting psychiatrist and the individual’s psychiatrist. I will consider in detail the testimony of the two experts in the context of the Criterion H concern below. The following is a summary of the testimony of the character witnesses in the order they testified.

A. The first witness was a security officer at the DOE site who has known the individual for a year and a half. He has been in the active military for two years and the national guard for four additional years. He testified that he believes it was correct for the individual to have answered no to the question on the QNSP asking if he had ever served in the military. Tr. at 112. This witness testified that after 29 days of basic training and an entry level separation, he believes that a separation officer would have told an enlistee that he had never been in the military. This witness also testified that he has known recruiters to give enlistees false information and he has seen enlistees to go to “extremes for separation.” Tr. at 112 and 114. He also testified that the individual is very honest and an excellent security guard. Tr. at 118.

B. The second witness was a security officer who served in the Air Force. He testified that when he enlisted in the Air Force he was guaranteed specific training. He testified that if his guaranteed training had been taken away and he was told that he would have to do another job “for the next six years instead of doing [the job] I wanted to do, I would have done anything to get out.” Tr. at 135.

This witness testified that during basic training an enlistee has no rank and that an enlistee only receives a rank after completion of the technical training which follows basic training. He also testified that he could remember training instructors saying “Hey, you know, you want to leave, I have someone to talk with you and we can get you out and it will be like it never happened.” Tr. at 139. This witness was asked if he thought the individual should have answered yes to having been in the military. He indicated that he believed that if you did not complete basic training you were

never actually in the military. Accordingly, he testified that he believes the individual answered the question about military service correctly. Tr. at 134.

The witness was then asked if he thought that four days of hospitalization at the Lackland Air Force mental hospital should be considered a “consultation with a mental health professional” and reported on the QNSP. He indicated that the hospital was just something the Air Force used to get people out of the military and he would not consider it a “consultation with a mental health professional.” Tr. at 148.

Finally, he testified that the individual is an honorable and trustworthy person and that he was well respected by the guard force at the facility. Tr. at 136.

C. The third witness was in the military for 8 ½ years as a personnel specialist. In his view, an enlistee receiving an entry level separation did serve in the military. However, he indicated that he believed the individual was told during Air Force out placement that he had not served in the military and on that basis the individual had honestly answered the question about military service on the QNSP. Tr. at 160. Finally, he testified that in his experience the individual has always been very honest. Tr. at 161.

D. The fourth witness went to high school with the individual. They joined the Air Force at the same time and were assigned to the same dorm during basic training. This witness was elected the dorm chief. He testified that the individual told him, in his capacity a dorm chief, that the military was not for him and that he wanted to go home. Tr. at 166. The witness also testified that the individual was upset about not receiving his guaranteed training and indicated that he heard cutting himself was a good way to get out of the military. Tr. at 167 and 168. The witness testified that he tried to convince the individual not to cut himself. The witness reported the conversations to his supervisor. Tr. at 167.

After the individual cut himself, the witness’s superior had a discussion with him about the individual. After that discussion the superior had the individual transferred to the medical unit. The witness characterized the medical unit as the place one goes when “you were waiting to get discharged or you have other things going on.” Tr. at 165. When asked why he believed the individual wanted to get out of the Air Force he indicated that when you go through basic training “it is very stressful mentally and physically. And they tear you down, and it can do a lot to a person to make them think that they cannot make it through. This is not for them. They need to go home. Starting off, we had a flight of 78 and we went down to -- I think our graduating flight was 45.” Tr. at 166.

Finally, this witness was asked about entry level separations. He testified that “Basic Training is considered - - you are trying to get in. It is kind of like the evaluation aspect. You can get out. And

if you get out during that time where you have not fully been sworn in, . . . you do not have to put it on that paperwork.” Tr. at 170. Finally this witness testified that he believes the individual is honest and that he would not falsify a DOE form. Tr. at 171.

E. The fifth witness had a twenty-year career in the United States Army. The last four years of his career were spent as an Army recruiter.

This witness was well informed about recruiting procedures in the military. When asked if a recruiter would tell a potential enlistee that if he lost his guaranteed job speciality then he could get released from the military with no adverse effect, this witness answered:

It is a selling tool. But, I mean we (Army) tell you that, too. We tell our soldiers that, look, we don't give you the job. We tell them that. We are going to give your guaranteed training and choice. If for some reason we cannot make and give you that job - - notice I said 'we cannot not you' - - you have to pay attention to the words.

Tr. at 205.

With respect to the Air Force's guaranteed employment contract, the witness testified that in order to receive training in the guaranteed field, the enlistee must stay mentally, physically and morally fit for the field. Tr. at 202. He testified that the Air Force did not reveal to recruits that they would receive additional screening during basic training, and that if an enlistee was not considered mentally, physically or morally fit for the job classification, the Air Force would consider that the enlistee had broken the contract and the enlistee would be required to train and work in an area chosen by the Air Force. Tr. at 199 and 202.

The witness provided an example of a situation when an enlistee would not receive his guaranteed training. He hypothesized that it might be discovered during basic training that an enlistee needs prescription eye glasses and therefore does not have the eye sight required to qualify for his guaranteed job specialty. In this situation the enlistee is not medically or physically fit for the job. In this situation the military believes there is no breach of the guarantee by the military even though the enlistee has lost his guaranteed training. Tr. at 206.

This witness also testified about entry level separations from the military. He indicated if an enlistee does not complete 180 days on active duty and is discharged from the military he received an "entry level separation." Technically the enlistee was in the military, but he is not eligible for VA loans, VA benefits and VA schooling or for the GI bill. He testified that "You have got to serve 180 days to become a Vet." Tr. at 204. The witness was then asked about the out placement process. Specifically he was asked why an Air Force official during out placement would suggest that an

enlistee receiving an entry level separation had not been in the military. The witness testified that he believed it was a misunderstanding. He suggested the out placement official was probably trying to inform individuals receiving an entry level separation that they were not eligible for Veterans benefits but may have said something more general like “No you were not in the miliary.” Tr. at 210.

The witness also discussed the Air Force Form DD214, which the individual received when he was given an entry level separation from the Air Force. In response to a question as to whether a person receiving a DD214 form had ever served in the military the witness answered “If you received a DD214, you served in the United States Military, and it tells you here, first off, the date entered.” Tr. at 204.

The witness testified that he does not believe that the individual intentionally falsified his QNSP. Tr. at 217. He testified that he went through DOE guard force basic training with the individual. He characterized the DOE training as intense and he testified that the individual held up very well and always had good spirits. Tr. at 223. The witnesses testified that he believed the individual was trustworthy and that he has a reputation for honesty. Tr. at 226.

F. The sixth witness was a supervisor at a local restaurant. The individual has been employed at the restaurant for most of the time since 1999. The witness testified that the individual is trustworthy, honest and of high integrity. She testified that she has assigned him a number of responsible positions and he always accomplished those tasks. She indicated he was always conscientious. Tr. at 234.

G. The seventh witness was a Sergeant in the DOE guard force. She testified that she had been told that the individual had failed to provide accurate information on the QNSP. She testified that she believes the individual is trustworthy and honest. She indicated that she reviewed his personnel file and that the file indicates that he has not had any job problems and that his job performance has been very good. Tr. at 243 and 246.

H. The eighth witness is a security guard who attended the DOE guard force academy training program with the individual. He testified that the individual performed very well during training. He testified that the individual job performance is excellent, the individual would not intentionally provide false information and the individual is an asset to the DOE security force. Tr. at 277-280.

He then testified about his own military service. He stated that when he entered the military he was guaranteed specific training. However, he indicated that he, to this day, did not realize that he had to stay physically, mentally and morally fit for the job classification or he would not have received the guaranteed training Tr. at 271.

I. The ninth witness has been a best friend of the individual for twelve years. He testified that rules matter to the individual, who has always been honest, and he believes the facility would benefit from having him as an employee. Tr. at 285-287. When asked how the individual described his military service, he testified that the individual had in social situations said “because he did not finish (basic training), he was not technically in the military.” Tr. at 289.

J. The tenth witness has known the individual since they were high school sophomores. He worked with the individual at the local restaurant described above. He testified that the individual would take responsibility for mistakes. Tr. at 294. He also testified that the individual was a trustworthy and honest individual. Tr. at 296.

K. The individual’s sister testified that the individual has never done anything deceitful or illegal or wrong and that he would not falsify the information he provided on the QNSP. Tr. at 301-302. She indicated that at the time the individual was applying for a position at the DOE facility she and her mother discussed with the individual how he should answer the QNSP question about military service. This witness testified that the individual told her that the Air Force official told him he never had to disclose on any application that he was in the military. She testified that she and her mother had both suggested that he “Just put it down or explain to them.” Tr. at 303.

L. The individual’s mother testified that shortly before the individual joined the Air Force, two friends in high school committed suicide, another friend was murdered and his uncle, who was a fireman, was killed in a fire. Tr. at 326. She testified that she thought the individual was depressed and that he needed to take some time for normal grieving before joining the Air Force. Tr. at 327. She testified that another uncle helped him sign up against her wishes. She clearly believed that the traumas in his life prior to his enlistment were a primary cause of his problems in the Air Force.

The mother testified that her son told her that he planned not to disclose his military service on the QNSP. She advised him to, at least, bring up his service with the DOE. However, after several conversations the individual told his mother that he believed the separation official’s statement and therefore he had decided that he was not required to disclose his military service. Accordingly, he told his mother that he decided not to disclose the military service on his QNSP. Tr. at 331 and 335.

She testified that her son has never been in any trouble, does not drink and is always the one that takes care of everybody and does everything for everybody. Tr. at 332. “He goes by the book, he follows the rules, he gives 100 percent.” Tr. at 345.

M. The Individual

The individual testified that during the fall of his senior year in high school he had discussions with military recruiters about joining the military. He indicated that he really wanted a career in law enforcement and believed the best way to start a law enforcement career was to serve in the Military Police. Tr. at 128.

The individual testified about his experience during basic training. He indicated that during basic training he realized he was unhappy and that he should have waited before enlisting. Tr. at 351. He testified that he was often on guard duty and unable to get enough sleep. He also testified that he was attacked by three enlistees in the dorm and received a number of bruises but was not seriously injured. Tr. at 356.

The individual testified that when he lost his guaranteed job training, he lost the only reason for joining the Air Force. Tr. at 352. He testified that he was told by other enlistees there were a variety of steps he could take to convince the Air Force to separate him. The two examples he gave were confessing to drug use and cutting himself. Tr. at 361. He determined that cutting himself would be the easiest approach. Tr. at 361. After he cut himself, he testified that he was taken to the medical center. He testified that when he looks back there is no “doubt in my mind that it was a psych ward. But that is because I have taken a lot of time to look over the situation. I went through group counseling there.” Tr. at 363. Finally, he testified that he believes the steps he took to be separated from the military were not appropriate and that he is embarrassed by his actions to get out of the military. Tr. at 371 and 386.

He was asked why he did not accurately report his Air Force enlistment. He testified that after he left the Air Force he tried to forget the experience. Tr. at 365. He stated that when he filled out the QNSP he did not think about his military service and he stated that “all I knew is I was told I technically was not in the military.” Tr. at 365. He stated “I give you my word there was no intent to deceive. . . . I honestly felt like I did not need to [disclose the service].” Tr. at 370. He concluded by indicating that he made mistakes at age 18 and he believes since he did not have to report his Air Force service it was to his advantage not to report the service. Tr. at 387. When he was asked why he failed to provide information about psychiatric counseling while he was an enlistee, he testified that at the time he filled out the QNSP he did not know who he had seen at Lackland’s medical center. In this regard he also stated that because he was trying to put his enlistment experience behind him, he did not think through the enlistment events when he answered that question on the QNSP. Tr. at 365.

V. ANALYSIS AND FINDINGS

A. Psychiatric Diagnosis - Criterion H Concern

Criterion H refers to a security concern involving a mental condition that causes a defect in judgment or reliability.

The DOE consulting psychiatrist's report indicates the individual was properly diagnosed with an adjustment disorder during his enlistment in the Air Force, but the individual does not currently have a diagnosable mental disorder. ^{4/} At the hearing the DOE consulting psychiatrist confirmed that in his view the individual does not have any current diagnosis of a mental disorder. Tr. at 45. When he was specifically asked if the individual had a current mental disorder, he answered no. Tr. at 58. The DOE psychiatrist concluded his description of his diagnosis by repeating the statement in his report that "There is no current and manifest evidence of any emotional or mental disorders." Tr. at 64. However, the DOE psychiatrist testified that the individual's behavior while he was an enlistee in the Air Force indicated an adjustment disorder. Tr. at 62 and 63. He indicated if a person has had difficulties adjusting to prior stressful events, he is more likely to have difficulties adjusting to future stressful situations. He specified that the chance the individual in this case will have difficulties adjusting in the future is somewhat more likely than not. Tr. at 64.

^{4/} The Notification Letter specifies a Criterion H security concern without a specific current psychiatric diagnosis based upon the following logic:

According to [the DOE psychiatrist], the individual is not psychiatrically cleared for security purposes at present. Although there is no current and manifest evidence of any emotional or mental disorders, there remain understandable concerns about the individual's judgment and reliability based on his demonstrated behaviors during [the individual's enlistment in the Air Force] and while undergoing background investigations and screening over the past year. His level of maturity may not be commensurate with the level of responsibility demanded by the duties of a security police office, although he does seem to clearly possess the potential for same.

The psychiatric report discussed at some length the information in the individual's file indicating the individual provided false information to the DOE. The psychiatric report's extended discussion of the falsifications and how such falsifications generally indicate a security concern resulted in the Notification Letter incorrectly finding that the DOE psychiatrist had diagnosed a current mental disorder.

The individual's psychiatrist testified that she had three meetings with the individual. Tr. at 49. She agreed with the DOE psychiatrist that there was no current diagnosis of a mental disorder. However, she strongly disagreed with the DOE psychiatrist on the probability of a future adjustment disorder. She testified that the individual's youth, isolation from family and friends and the significant stresses were a primary causes of his adjustment disorder while an enlistee in the Air Force. She testified that the passage of time makes it less likely that he will have adjustment problems in the future. Tr. at 73. She also indicated that the individual now has more support in his life, has matured and has his own coping mechanism. She concluded that the individual is not a higher risk for an adjustment disorder problem than a person with no prior diagnosis of adjustment disorder. Tr. at 74. I am convinced that the DOE psychiatrist after listening to the individual psychiatrist generally agreed with her position that the likelihood of future adjustment problems is not significant.

Since both of the experts agree that there is no current psychiatric diagnosis of a mental illness, I find that there is no Criterion H security concern.

B. Unusual Conduct - Criterion L Concern

The Criterion L security concern in this case relates to unusual behavior that puts into question the individual's reliability. Specifically, the Notification letter finds a Criterion L concern exists because the individual "engaged in deceitful behavior to obtain separation from active service with the United State Air Force. [The individual] faked a suicide attempt/gesture." Notification Letter at 4. After reviewing the testimony, I find as discussed below that this concern has been resolved.

The individual admits that he made a suicide gesture in an attempt to be released from the Air Force. The testimony indicates that at the time of the suicide gesture, the individual was 18 years old, was in the process of grieving the death of a number of friends, under significant pressure that is normally a part of basic training and was very unhappy after losing his guaranteed training. Further, he was depressed because he felt he was losing control of his future. For example, when he tried to discuss the loss of his guaranteed training with his military superiors, the chaplain and the professional in the health center, the individual was told that he would just have to live with different training.

It is clear from the testimony that basic training is normally a very stressful undertaking and that many young enlistees are unable to handle the pressure. The individual was very young and for the first time isolated from his family and friends. He was left without a support system. The lack of maturity and a lack of a normal support mechanism combined with the unwillingness of the Air Force to provide a separation or the agreed to training resulted in the break down of the individual's decision making process. He decided to take admittedly inappropriate steps to be released from the Air Force.

The individual has presented testimony to indicate he has matured in the four plus years since his military enlistment. He has shown that he has successfully dealt with the pressures of the DOE guard force academy and has established an excellent record as a DOE guard. Many witnesses that know him well testified that he is now a responsible adult. I believe he has demonstrated that his suicide gesture when he was 18 years old and under severe pressure was an isolated event and very unlikely to recur. Therefore, I find that the suicide gesture does not indicate current unreliability. Therefore, I find that the Criterion L security concern has been mitigated.

C. Falsifications and Omissions - Criterion F Concern

Criterion F relates to security concerns involving falsification and serious omissions. Specifically, the Notification Letter indicates a Criterion F security concern on the basis of the individual's failure to accurately complete the QNSP. It is undisputed that he did not provide information about his Air Force service and consultation with mental health professionals while in the Air Force. He also failed to provide the same information during a psychological evaluation and during an interview with an FBI investigator. Notification Letter page 3. These falsifications occurred from January through April 2002.

I have thoroughly considered the record of this proceeding, including the letters submitted by the individual from co-workers. From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when an access authorization 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), (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).

In his closing statement the DOE counsel indicated that the individual believed he followed the advice of the out placement Air Force official in not reporting his Air Force service. The counsel indicated that not reporting the service might have been "looking for a loophole, but it certainly would not constitute deliberate misrepresentation, or would probably not." Tr. at 395.

I agree with the DOE counsel that the individual was told that he did not need to report the Air Force enlistment by an out placement Air Force official. I am convinced by the explanation by the fifth witness that the individual was told he did not have to report his service in the military as a standard answer to inquiries about military benefits. Nevertheless, it was inappropriate and self serving to rely on a statement by an Air Force official as a reason not to fully answer a question posed by the DOE on a QNSP. A person seeking a security clearance should be well aware of the need for complete, honest and candid answers to DOE questions. Therefore when completing a QNSP such

an individual should err on the side of providing too much rather than too little information. If there is any doubt about whether to provide information in response to a question, the person completing the form must either provide the information or discuss his uncertainty with the DOE. Similarly, the statements of the Air Force official does not provide a substantial reason for not having provided the relevant information during a psychological assessment and an FBI interview. In each of these situations a reasonable person would have realized that full candor was required. *Personnel Security Review (Case No. VSA-0312)*, 28 DOE ¶ 83,008 (2000). *Personnel Security Review (Case No. VSA-0032)*, 25 DOE ¶ 83,004 (1995).

The individual's discussions with his mother and sister about how to answer the question on the QNSP indicate that he actually did recognize that his enlistment service was potentially responsive to the question and could be of possible interest to the DOE. Therefore, I believe his failure to disclose the information or to ask the DOE about whether he should disclose the information was not due to an honest misunderstanding or misinterpretation, but was a considered decision to withhold potentially embarrassing and derogatory information.

I also find that the individual was deliberately untruthful with respect to his omission of information about his mental health consultation. The individual's stated reason for not having disclosed his mental health consultation while in the military is self serving. He indicated that he just did not want to think about the events that occurred when he was in the military. He also indicated that he was embarrassed at revealing this derogatory information to the DOE, the psychologist and the FBI. Any person faced with unpleasant episodes in his life could make the same statement. This does not justify the omission. The DOE requires that holder of access authorizations provide complete and accurate background information even when the information is embarrassing.

It is clear to me that the individual intentionally failed to provide accurate information, and that his failure to provide information is recent. The failures to provide accurate information within the last 15 months occurred in January 2002(QNSP), March 2002 (physiological screening) and April 2002 (FBI interview). Clearly, the DOE has a security concern that such failures may mean the individual will not be forthcoming in the future.

It is difficult to predict when the individual will change his mindset so that he is readily willing to provide unflattering information when such disclosures are required. I believe that a period of one year is inadequate. Given the falsifications are recent, the individual has presented a number of witnesses and reference letters in an attempt to convince me that he will be completely candid in the future. Clearly, he has many friends and coworkers that trust him and believe he is an honest person. However, the opinions of his friends do not convince me that his recent and repeated failure to be candid with the DOE will not be repeated. At this time, I do not believe the individual has established a pattern of honesty that would overcome the security concern created by his failures to provide complete information to the DOE.

I believe the individual has established that he currently has a good reputation and is a productive employee. However, given the brief period since his falsifications, I do not believe that that these factors mitigate the ongoing concern raised by his failure to provide complete information to the DOE.

VI. CONCLUSION

As indicated above, I have concluded that the individual has not resolved the DOE security concerns under 10 C.F.R. § 710.8(f). In view of the record before me, I am not 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 not 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: July 3, 2003