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February 13, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 14, 2003

Case Number: TSO-0033

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." <sup>1/</sup> A DOE Operations Office suspended the Individual's access authorization pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, it is my decision that the Individual's access authorization not be restored.

**I. Background**

The Individual is employed by a contractor at a DOE facility. Potentially derogatory information concerning the Individual, a June 2002 arrest for Driving Under the Influence of Alcohol (DUI), came to the attention of the local security office. The local security office then conducted a Personnel Security Interview (PSI) with the Individual concerning the arrest. Later, the Individual's updated case file was reviewed by a DOE consultant psychiatrist (DOE Psychiatrist) who had previously examined the Individual in person in June 2001. In a subsequent May 2003 letter, the DOE Psychiatrist opined that in light of the Individual's latest arrest and other newly available information, the Individual could properly be diagnosed as suffering from alcohol abuse without reformation, a condition that could lead to a defect of judgment and reliability.

Because the derogatory information concerning the Individual had not been resolved, the local DOE Office obtained authority to initiate this administrative review proceeding. The local DOE Office then issued a

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<sup>1/</sup> Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

Notification Letter to the Individual, citing the DOE Psychiatrist's diagnosis of alcohol abuse and the Individual's past history of alcohol related problems and arrests as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J). 2/

Upon receipt of the Notification Letter, the Individual filed a response to the Notification Letter and requested a hearing. The DOE transmitted the Individual's hearing request to the Office of Hearings and Appeals (OHA) Director, and the OHA Director appointed me as the Hearing Officer in this case. 10 C.F.R. § 710.25(a), (b).

At the hearing, the Individual represented himself and offered his own testimony as well as the testimony of his current treating psychiatrist and his current supervisor. The local DOE office presented one witness, the DOE Psychiatrist. The local DOE Office entered 13 exhibits into the record (Exhibits 1 to 13); the Individual tendered one exhibit (Ind. Exhibit 1). On January 16, 2004, I closed the record in this case when I received the hearing transcript.

## **II. Standard of Review**

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the 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 continuance or recurrence; and other relevant and material factors.

After consideration of all the relevant information in the record, I conclude for the reasons set forth in this Opinion that the local DOE Office properly invoked Criterion J. I also find that the security concerns raised by the derogatory information have not been sufficiently mitigated. Consequently, it is my decision that the Individual's access authorization should not be restored.

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2/ Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

### III. Findings of Fact and Analysis

The derogatory information concerning Criterion J centers on the Individual's alcohol problem. In response, the Individual concedes that he had an alcohol problem but maintains that he is now rehabilitated. It is beyond dispute that a diagnosis of alcohol abuse raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243, 27 DOE ¶ 82,808 (2002)*. Moreover, the facts of the present case are not in dispute. A brief synopsis of the relevant facts and my analysis of these facts are presented below.

#### *A. Factual Background*

The Individual has been arrested and sentenced for alcohol-related offenses in 1982, 1983, 1985, and 2002. Ex. 7 at 24, 25; Ex. 12 at 4. The Individual stated that he began to consume alcohol regularly upon the breakup of his first marriage. Ex. 7 at 19. After his arrest in 1985, the Individual stopped consuming alcohol and participated in a treatment program consisting of group and individual counseling twice monthly for approximately one year. Ex. 7 at 26-27. During this time the Individual attended 48 Alcoholics Anonymous meetings the last of which was in 1986. Ex. 7 at 29. During the period from 1985 to 1994, the Individual was essentially abstinent consuming only a total of 6 beers (one six-pack) during that time. Ex. 12 at 15-17. Afterwards, however, the Individual began again to consume alcoholic beverages. Ex. 12 at 17. The Individual's alcohol consumption was brought to the attention of the local security office when in 1998, the Individual's then third wife sent a note to the Individual's place of employment asking for an accommodation based upon the Individual's depression and his wife's suspicion that the Individual may have been suffering from alcohol dependency. Ex. 9 at 2. <sup>3/</sup> His then spouse wrote that the Individual had been consuming 12-18 beers a day. Ex. 9 at 2. During this time, the Individual was admitted to an inpatient treatment facility for the treatment of his depression, where he was advised that he might have a problem with "binge drinking" and was advised not to consume alcoholic beverages. Ex. 10 at 2, 15.

The Individual was subsequently sent to the DOE Psychiatrist for an interview and examination in 2001. In his June 2001 report, the DOE Psychiatrist opined that the Individual was not then an abuser of alcohol. Ex. 11 at 1. However, the DOE Psychiatrist did note in his report that he believed that at the interview the Individual minimized the extent of his alcohol problem. Ex. 11 at 1, 5. The DOE Psychiatrist reported that the Individual had stopped consuming alcohol in February 2001. Ex. 11 at 3. With regard to the Individual's current pattern of abstinence, the DOE Psychiatrist noted the changes in the Individual's life that were contributing to this new period of abstinence. Specifically, the Individual had informed the DOE Psychiatrist that his marriage was going well and that he and his spouse were attending church regularly. Ex. 11 at 3. The Individual also informed the DOE Psychiatrist that he was committed to abstinence

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<sup>3/</sup> The Individual's depressive illness has not been raised as a security concern by the local security office.

because of concerns that continued alcohol consumption might injure his health. Ex. 11 at 3. Both the Individual and his wife had made new friends through the church whose lifestyles did not include alcohol. Ex. 11 at 3. While the DOE Psychiatrist was not able to verify the Individual's newest claim of abstinence, the fact that the Individual had not had any further alcohol related arrests indicated to the DOE Psychiatrist that he had reformed his alcohol consumption and was no longer abusing alcohol. Ex. 11 at 5.

When the local security office received notice of the Individual's latest arrest in 2002 for DUI, the DOE Psychiatrist was asked to review the available information concerning the Individual to see whether his June 2001 opinion was still valid. In a May 2003 report, the DOE Psychiatrist stated that given the newest information available to him he must now conclude that the Individual was an abuser of alcohol without reformation and that this condition could cause a defect in judgment and reliability. Ex. 13 at 1; Ex. 12 at 4. The DOE Psychiatrist stated that according to a recently conducted PSI, the Individual was now again consuming alcohol because of stress and the lack of moral support arising from his recent divorce from his wife. Ex. 13 at 1. The DOE Psychiatrist went on to note that several of the positive factors he noted earlier, marriage, concern for his health, and new friends, were apparently no longer present in his life. Ex. 13 at 1. Additionally, some of the information the Individual gave him in his prior interview had now been contradicted, specifically, the Individual now admitted to having a family history of alcoholism. Ex. 13 at 1. While the DOE Psychiatrist conceded that "technically" an individual must have "recurrent" problems with alcohol over a one year period to be diagnosed with alcohol abuse, the Individual, in addition to the June 2002 DUI, had also during the same time engaged in risks to his health and employment status by continuing to consume alcohol. Ex. 13 at 2. Consequently, he diagnosed the individual as suffering from alcohol abuse.

During the pendency of the proceeding, the Individual's treating psychiatrist submitted a letter in June 2003 reporting on the Individual's condition. Ind. Ex. 1. In the report he notes that the Individual was doing well on his current drugs for depression. Ind. Ex. 1 at 1. He also noted that the Individual had a history of alcohol abuse and a conviction for driving under the influence. Ind. Ex. at 1. However, the treating psychiatrist believed that the Individual had "quickly recovered from this incident [the conviction] and he has remained sober since." Ind. Ex. 1 at 1. In his opinion, he believes that the Individual was now "currently very stable" and not a risk to his workplace or his co-workers. Ind. Ex. 1 at 1.

### *B. Hearing Testimony*

At the hearing, the Individual conceded that he has an alcohol problem. Transcript of Hearing (Tr.) at 32, 33. The Individual asserted that he has not consumed alcohol since his DUI arrest in 2002 and has thus been abstinent for approximately 18 months as of the date of the hearing. Tr. at 29. The Individual also completed a year of court-ordered substance abuse classes pursuant to his guilty plea to the 2002 DUI charge. Tr. at 42. The classes consisted of a group discussion lead by a psychiatrist. Tr. at 45. He attended these meetings once a week for a year. Tr. at 45. He also asserted that in the time period since his latest DUI arrest, he has attended sessions with an Employee Assistance Program (EAP) counselor and has

undergone hypnotherapy to assist him with stress reduction and his abstinence from alcohol. Tr. at 29, 48. In these sessions, the therapist would try to get him to envision a large can of beer and then progressively reduce the size of the can until the Individual can envision stomping on the tiny can of beer. Tr. at 49. Thus, the Individual realizes that he has control over the beer. Tr. at 49. The therapy also involved the Individual envisioning other scenes in order to produce relaxation. Tr. at 49-50. The Individual was also treated with a drug, Naltrexone, for a short period of time to help reduce his cravings for alcohol. Tr. at 53-54. He does not now have any cravings for alcohol. Tr. at 54.

The Individual also testified as to the effect of his son's recent death on him. The Individual's son was riding with the son's wife who was under the influence of alcohol when they were involved in an accident tragically killing the Individual's son. Tr. at 30. After feeling the pain that this alcohol-related incident caused he knows that he never wants to be in a similar situation and is even more determined to remain abstinent. Tr. at 31. While he realizes that in the past he has made and broken commitments to stop consuming alcohol, the loss of his son has really impressed upon him the need to remain abstinent. Further, unlike many times in his past, after the trauma and stress of this event he did not revert back to consuming alcohol. Tr. at 30.

The Individual also testified that in the past he had resumed consuming alcohol when he was depressed. Tr. at 34. However, he is currently on antidepressant medication and is doing well. Tr. at 34. He is also now in a relationship with a woman for the past year and they live together. Tr. at 50-51. She rarely consumes alcoholic beverages and they do not keep alcoholic beverages in their house. Tr. at 51.

The Individual's front line manager testified that he had never observed the Individual consume alcohol while on duty nor smelled alcohol in his presence. Tr. at 8. The supervisor does not, however, socialize with the Individual outside of the work environment. Tr. at 9-10.

The Individual's current treating psychiatrist also testified. He had last seen the Individual approximately 4 months before the date of the hearing. Tr. at 13. He diagnosed the Individual as suffering from depressive disorder and stated that the Individual was currently doing very well on his current regimen of antidepressant medications. Tr. at 13. The treating psychiatrist admitted that he was unaware of the Individual's 2002 arrest for DUI and that his focus in treating the Individual was to treat his depression, not his alcohol problem. Tr. at 18, 21-22. He noted that the Individual has a past history of alcohol abuse and that "as far as I know, it also is in remission." Tr. at 13. He concurs with the DOE Psychiatrist's diagnosis that the Individual does suffer from alcohol abuse. Tr. at 18. He believes that the Individual's bouts of excess alcohol consumption were related to occasions when his depression worsened, and that the prognosis concerning the Individual's depression was "rather favorable." Tr. at 22.

With regard to treatment, the treating psychiatrist stated that a treatment program for alcohol abuse would be useful for someone in the Individual's situation. Tr. at 23-24. While he would leave the details of such a treatment program to a specialist, he believes that an adequate treatment program might consist of an intensive outpatient program with group therapy several days a week or an inpatient program of 10 to 14

days followed by an intensive outpatient program. Tr. at 24. The Individual's history of a 10 year abstinence would be an indicator of a more favorable prognosis. Tr. at 25. The treating psychiatrist concluded that if the Individual was working on some type of alcohol treatment program along with urine alcohol testing, and if his treatment for depression was optimized, the Individual could obtain another lengthy period of sobriety. Tr. at 26.

After listening to the Individual and the Individual's treating psychiatrist's testimony, the DOE Psychiatrist offered his opinion concerning the Individual's condition. The DOE Psychiatrist believes that the Individual is currently suffering from alcohol abuse for the reasons stated in his May 2003 report and that he is not rehabilitated. Tr. at 60, 64-66, 70; *see* Ex. 13 (May 2003 Report). When asked if the testimony of the Individual or his treating psychiatrist affected his opinion concerning the diagnosis of alcohol abuse, the DOE Psychiatrist noted that none of the testimony had touched upon the Individual's lack of candor noted in the May 2003 report. Tr. at 66. He went on to comment "[s]o, you know, I cannot accept his [the Individual's] testimony at one time at face value. I'm not saying that it's inaccurate today, but this is the background that I have to be concerned with." Tr. at 67. He also noted that the Individual had not informed his treating psychiatrist of the most recent 2002 DUI. Tr. at 68. This was significant in light of fact that the Individual had been warned against consuming alcohol. Tr. at 68. This also indicated that the Individual had been less than candid to his treating psychiatrist. Tr. at 68; *see* Tr. at 16. He did not believe that such conduct could be attributed to the Individual's problem with depression. Tr. at 68.

The DOE Psychiatrist also found the length of the Individual's abstinence insufficient for him to conclude that the Individual was reformed or rehabilitated from his alcohol abuse. Tr. 68, 70-71. Referring to the treating psychiatrist's assertion that a one year period of abstinence was a favorable prognostic indicator, he noted that there is little available data that gives guidance as to how long a person must be abstinent before he is "over the hump" of an alcohol problem. Tr. at 68. After a search of the available literature he could only find two studies that attempted to determine relationship between the length of abstinence from alcohol and the risk of relapse. Tr. at 69. Both studies indicated that an abstinence of 5 years is required before the risk of relapse goes below 50 percent. Tr. at 69, 77. The DOE Psychiatrist also discounted the effect of the Individual's recent loss of his son and believed that would not be a long term positive factor concerning the Individual's ability to remain abstinent. Tr. at 70, 83. While not specifically outlining a suggested treatment program for the Individual, the DOE Psychiatrist suggested treatment with Alcoholics Anonymous. Tr. at 81. However, the Individual's lack of candor would be a negative factor with regard to any future treatment for alcohol abuse. Tr. at 81. The DOE Psychiatrist also testified that, with regard to hypnotherapy, it was not a currently recognized therapy for alcohol abuse and that he had not seen any evidence concerning its efficacy. Tr. at 69. In sum, the DOE Psychiatrist found that, as of the date of the hearing, the Individual suffers from alcohol abuse and is not rehabilitated. Tr. at 70-71.

### C. Analysis

The sole issue that must be resolved in order to determine whether the Individual should have his clearance restored is whether the Individual has demonstrated that he is sufficiently rehabilitated from alcohol abuse. I must answer this in the negative. There is essentially no dispute that the Individual suffers from alcohol abuse. In the present case both the DOE Psychiatrist and the treating psychiatrist suggested more formal treatment programs than the one that the Individual has undergone since his last DUI. The DOE Psychiatrist believes that one must be abstinent from consuming alcohol for a period of 5 years before one can be considered rehabilitated. The Individual has been abstinent for only approximately 18 months, a period short of the five years recommended by the DOE Psychiatrist. While the treating psychiatrist stated that an individual having a year of abstinence had a favorable prognosis, he declined to offer a specific opinion as to whether the Individual was rehabilitated. Tr. at 20-21. Significantly, the Individual has undergone only a limited amount of treatment specifically for his alcohol problem since his last DUI. His treating psychiatrist has essentially treated only the Individual's depressive illness. Moreover, the Individual has only seen the EAP counselor on five occasions. <sup>4/</sup> The Individual's court-ordered substance abuse classes do not appear to have been specifically focused to treat the Individual's alcohol problem. *See* Tr. at 47. Additionally, the Individual's alcohol problem has been longstanding despite his prior 10-year period of abstinence. Given the facts of this case, I cannot conclude that the Individual is sufficiently rehabilitated from his alcohol problem at this time.

The Individual argues that in previous cases a significant number of other DOE Psychiatrists have determined that individuals who have demonstrated abstinence for a period of 12 months should be considered as being rehabilitated from alcohol problems. Thus, given his current 18 months of sobriety he should be deemed to have been rehabilitated. *See, e.g., Personnel Security Hearing, Case No. VSO-0276, 27 DOE ¶ 82,819 at 85,907 (1997)* (and cases cited therein). However, OHA has never endorsed a "hard and fast" 12-month rule to determine rehabilitation from substance abuse problems such as alcohol abuse. *Personnel Security Hearing, Case No. VSO-0276, 27 DOE ¶ 82,819 at 85,907 (1997)*. Nor has OHA determined that there is a unitary medical consensus as to the length of abstinence required to demonstrate rehabilitation from substance abuse problems. *See Personnel Security Review, Case No. VSA-0102, 26 DOE ¶ 83,008 at 86,557 n.4 (1997)*. Each security clearance case involving medical and psychiatric issues encompasses a determination based on the evidence and expert opinions presented in the case. Medical professionals have recognized varying periods of abstinence in making recommendations as to whether individuals have been rehabilitated. *See, e.g., Personnel Security Hearing, Case No. VSO-0276, 27 DOE ¶ 82,819 (1999)* (licensed clinical social worker opines that an individual is rehabilitated with 8 months of abstinence); *Personnel Security Hearing Case No. TSO-0009, 28 DOE ¶ 82,941 (2003)* (DOE psychologist recommendation for an individual suffering from alcohol dependence of 3 years

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<sup>4/</sup> This is the maximum number of visits authorised by the EAP. Tr. at 48.

of sobriety or 2 years of sobriety with treatment); *Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (2002) (DOE psychiatrist opining that treatment for two years was a “rule of thumb” for rehabilitation of alcohol problems). Consequently, I do not believe that the Individual’s current period of abstinence by itself requires me to find that he is rehabilitated.

In sum I do not believe that the Individual has provided enough evidence whereby I can conclude that he is sufficiently rehabilitated from his alcohol abuse problem. While I cannot recommend that the Individual’s clearance be restored, I do believe that the Individual has made a promising start and is committed to avoiding consuming alcohol in the future.

#### **IV. Conclusion**

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual’s eligibility for a security clearance. I also find insufficient evidence in the record to resolve this doubt. Therefore, I cannot conclude that restoring the Individual’s 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). Consequently, it is my decision that the Individual’s access authorization should not be restored.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: February 13, 2004

