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January 7, 2004  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: May 2, 2003

Case Number: TSO-0037

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold 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." A Department of Energy (DOE) Operations Office determined that reliable information it had received raised substantial doubt concerning the individual's eligibility for access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the evidence and testimony in the record of this proceeding, the individual's access authorization should be restored. For the reasons stated below, I find that the individual's access authorization should not be restored at this time.

**I. BACKGROUND**

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The present proceeding arose when the individual reported to an on-site psychologist, during a routine examination, that he had been drinking heavily, but had stopped. This behavior came to the attention of the personnel security branch of the DOE Operations Office (local security office). When the local security office began investigating the facts, it became concerned that the individual might have a condition that posed a threat to the national security. Its concern grew when it learned that the individual had been arrested for driving while intoxicated (DWI) in 1998 and had not revealed this fact to the local security office. The local security office conducted a personnel security interview (PSI) of the individual in order to resolve its concerns about his abuse of alcohol and his lack of forthrightness. Unable to resolve those concerns at the PSI, the local security office arranged for the individual to meet with a DOE consultant psychiatrist. The DOE psychiatrist examined the individual and determined that the individual suffered from alcohol abuse without adequate evidence of rehabilitation or reformation.

On the basis of that information, the local security office issued the individual a Notification Letter, in which it stated that the DOE has substantial doubt about the individual's eligibility for access authorization, based

on disqualifying criteria set forth in section 710.8, paragraphs (f) and (j). The Notification Letter describes three occasions in which the individual withheld information about his 1998 DWI arrest when he was obliged to do so, including one incident of falsifying a response on a security questionnaire by indicating that he had never been charged with or convicted of any offense related to alcohol or drugs. The local security office maintains that such withholding or falsifying of information raises a security concern under 10 C.F.R. § 710.8(f) (Criterion F). The Notification Letter also refers to a written evaluation issued on April 11, 2002, in which the DOE psychiatrist found that the individual suffers from alcohol abuse with no evidence of rehabilitation or reformation. The local security office maintains that this medical condition raises an additional security concern under 10 C.F.R. § 710.8(j) (Criterion J).

The Notification Letter also informed the individual of his procedural rights, including his right to a hearing. The individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as hearing officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called three witnesses: the DOE psychiatrist, the individual's supervisor, and the individual himself. The individual, who represented himself, called his substance abuse counselor as a witness and testified on his own behalf. The DOE submitted 15 written exhibits and the individual submitted three written exhibits. The record of this proceeding was closed when I received a copy of the transcript of the hearing (Tr.).

## **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 applicable DOE regulations state 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 or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: 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 testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “will not endanger the common defense and security and will

be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d); *see, e.g., Personnel Security Hearing* (Case No. TSO-0009), (October 21, 2003), and cases cited therein. In the present case, reliable information has raised such a question, and the individual has not demonstrated that restoring his security clearance will not endanger the common defense and will clearly be in the national interest.

### III. FINDINGS OF FACT

In February 2000 the individual fractured his wrist and foot in an agricultural accident. He was incapacitated, and did not return to work until May of that year. Shortly after he returned to work, he went to his routine annual psychological evaluation. During the evaluation, he told the psychologist that he had been drinking regularly and heavily during the three months he was incapacitated, because of his injuries and also because he broke up with his girlfriend and his father had fallen extremely ill. *See* Transcript of February 21, 2001 Personnel Security Interview (PSI 1) at 17, 66-72; Transcript of November 30, 2001 Personnel Security Interview (PSI 2) at 43. He also reported that he had stopped drinking altogether the week before he returned to work. PSI 1 at 26, 38; PSI 2 at 45. The psychologist suggested that the individual attend weekly onsite substance abuse counseling sessions. PSI 1 at 32.

In February 2001 the local security office conducted an interview with the individual in order to obtain information related to his history of alcohol consumption, among other things. The individual explained that he had started drinking beer in high school, but had stopped drinking altogether in 1992 and was fully abstinent from then until his accident in 2000. PSI 1 at 52. He stated that he was seeing the substance abuse counselor on a weekly basis and was not drinking at all. *Id.* at 34.

In March 2001 the individual completed a Questionnaire for National Security Positions (QNSP) as part of his routine reinvestigation for continuation of access authorization. In response to Question 23d on that form, “Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?” the individual marked the “No” box. DOE Exhibit 14 at 7.

In November 2001 the local security office conducted a second interview with the individual. When first questioned whether he had ever been arrested for DWI, the individual stated he had not. PSI 2 at 46-47. The interviewer then revealed that the local security office’s investigation had uncovered a DWI arrest related to a 1998 automobile accident after which the individual’s blood alcohol level was .24 or .25. *Id.* at 47, 61. The individual then admitted to that arrest, explained that he pleaded guilty to the charge at the hearing the following year, and completed all the sentencing requirements. *Id.* at 48-67. When asked why he did not report the arrest to the local security office during the earlier PSI, he stated that he thought it was not on his record. *Id.* at 63. When asked why he did not report it on the QNSP, he stated that he was “trying to cover up, no, like I didn’t want nobody to know anything about it.” *Id.* at 68. He stated several times during this second interview that he chose not to reveal the DWI to the local security office, or to an investigator who questioned him in June 2001, for fear of losing his job. *Id.* at 76, 79, 94, 97. He also admitted that he knew that falsifying statements to the local security office was grounds for revocation of his access authorization. *Id.* at 68-69.

In February 2002 the individual was arrested again for DWI. According to the records in this file, he was involved in a motor vehicle accident after which a breath test was administered that calculated an alcohol concentration of .20. DOE Exhibit 13. As part of the court sentencing for the DWI, the individual was ordered to attend 60 hours of counseling at a substance abuse recovery program.

At the end of the February 2001 PSI, the individual consented to be evaluated by a DOE psychiatrist. That evaluation took place in April 2002, by which time the individual had been arrested for DWI a second time and, according to the individual, he had stopped drinking alcohol in any form once again. DOE Exhibit 3 (Psychiatrist's Report) at 5. After reviewing the security file provided to him and conducting an evaluation of the individual, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). *Id.* at 8. He did not conclude that the individual was alcohol dependent at that time, because the individual met only two of criteria listed in the DSM-IV for that condition (alcohol tolerance, and attempts to stop or cut down alcohol consumption), whereas three or more of the listed criteria should be observed to make that diagnosis. *See id.* at 8-9. In reaching his diagnosis, the DOE psychologist highlighted the following facts: the individual acknowledged that excessive drinking was a factor in his divorce in 1984; he stopped drinking in 1991 for six years because it was harming his health; at the time of his first DWI in 1998, his blood alcohol level was triple the legal limit; he was told in counseling following the 1998 accident that he should not drink; after his 2000 agricultural accident, his drinking increased to the point that he was passing out every night; in a psychological evaluation following his return to work in May 2000, he was advised not to drink; and at the time of his second DWI in 2002, his blood alcohol level was more than twice the legal limit. *Id.* at 7-8. The DOE psychiatrist's report also contains the only description in the record of the individual's 2002 DWI arrest: the individual maintains he had not been drinking the night before, but at 11:30 in the morning he was involved in a minor accident, after which he refused to take a field sobriety test. Nevertheless, he reported that his blood alcohol level was .20, and that he had drunk two glasses of wine at home before getting behind the wheel. The DOE psychiatrist noted that a blood alcohol level of .20 would be consistent with a person's having consumed 14 alcoholic drinks within the past four hours. *Id.* at 4-5. The DOE psychiatrist concluded that the individual had not yet achieved rehabilitation or reformation from his alcohol abuse, and to do so

would need to enter outpatient alcohol abuse treatment program of moderate intensity. His current weekly program at [the substance abuse recovery program] does not yet meet this level of treatment intensity. It would need to be supplemented by additional substance abuse counseling, such as resuming substance abuse counseling with [onsite counseling] or resuming group work in Alcoholics Anonymous at least twice weekly. His treatment program should include maintenance of sobriety. Duration of such treatment should be for a year or two to provide adequate evidence of rehabilitation and reformation.

*Id.* at 10.

At the hearing, the individual testified in response to the local security office's concerns under Criteria F and J. When asked why he answered "No" to the question on the 2001 QNSP whether he had ever been charged or convicted of an alcohol-related offense, the individual admitted that the answer he gave was incorrect and explained:

A. Well, at the time, I— I think I panicked, I got scared, I thought I was going to lose my job if people found out, if DOE found out about, you know, this problem, and that's why I did that. Just plain and simple, I got scared.

Q. Just a poor judgment?

A. Poor judgment, yes, sir.

Transcript of Hearing (Tr.) at 10. He also testified that during the November 2001 PSI, he at first denied having been charged with a DWI, then admitted to it after he realized that the local security office already had information about it. *Id.* at 11. Concerning the diagnosis of alcohol abuse, the individual agreed with the facts on which the DOE psychiatrist relied in reaching that conclusion. *Id.* at 11-12. He also freely admits that he has an alcohol problem. *Id.* at 12. He testified that his last drink was on the day of his February 2002 DWI arrest. *Id.* at 13. He completed his court-ordered course of treatment with the substance abuse recovery program in July 2003 and signed a contract to continue counseling with the same program on a voluntary basis. *Id.* at 13, 17. *See also* Individual's Exhibits A and C (Session Attendance Sheet and Certificate of Completion).

The individual and his counselor from the substance abuse recovery program testified about the likelihood of his success in remaining sober. Evidence in this area is important, because the individual has a significant history of obtaining and then losing sobriety. By the individual's account, he drank no alcohol for a period of six years between 1991 and his DWI in 1998, and between May 2000 and his second DWI in 2002. *See, e.g.*, PSI 1 at 85; PSI 2 at 84. The counselor described the content of the group meetings, their availability, their frequency, and the program's expectations of its participants. She also explained that every participant must take a breath test before every meeting he or she attends, and that the program has a crisis phone line available to its patients 24 hours a day, seven days a week. Tr. at 43-48. When asked her opinion on the individual's progress and the likelihood of his maintaining sobriety in light of his previous failures, she responded, ". . . [F]rom listening to him and working with him, I believe that he has figured out that alcohol will do nothing but bring him down, because he knows it will, it has. . . . it becomes such a burden, and it takes so much away from you, and I don't think he wants what he has gained and what he has worked for taken away from him." *Id.* at 50-51. Asked to address the difference between his earlier periods of sobriety and the current one, the individual himself stated that he now felt he had good support from the substance abuse recovery program and from his family, which includes his present wife and his parents, all of whom are non-drinkers. *Id.* at 19, 25, 30-31.

During the hearing, the DOE psychiatrist listened to the testimony of the individual and his counselor, and testified himself. Two matters of significance arise from his testimony. The first is that he modified his diagnosis of the individual from alcohol abuse to alcohol dependence. He explained that, during his evaluation of the individual, he felt that the individual was likely alcohol dependent, but he felt that he could not make that diagnosis because the individual met only two of the DSM criteria for dependence clearly (alcohol tolerance and unsuccessful efforts to cut back or control use), though he “was kind of close on a third.” *Id.* at 76 (the third being continued use despite knowledge of a medical condition exacerbated by alcohol). Rather, he chose the more conservative diagnosis, alcohol abuse. *Id.* Although the individual had told the DOE psychiatrist that counselors had recommended that he not continue to drink, he was not convinced that the individual had clearly understood the proscription. At the hearing, however, the DOE psychiatrist heard for the first time that the individual’s medical doctor had suggested that he not drink, that he understood the warning, and that he disregarded it. *Id.* at 35 (testimony of individual). The medical doctor treated him for gout, a condition that is exacerbated by alcohol. *Id.* at 76.

However, today, [the individual] indicated that he was told by his doctor that when he had gout he should stop drinking. I was a little iffy on that before, so it makes that point of information a little more certain, and it probably is more technically correct to say that his diagnosis would be alcohol dependence rather than alcohol abuse.

*Id.*

The DOE psychiatrist also gave his opinion at the hearing that the individual had not yet achieved rehabilitation from his alcohol disease. In his report, the DOE psychiatrist stated that the individual’s level of treatment at the substance abuse recovery center was not sufficiently intense to constitute rehabilitation. The DOE psychiatrist characterized the treatment the individual had received through the substance abuse recovery program as lacking sufficient structure and less intensive than what was needed to constitute rehabilitation in the individual’s case. *Id.* at 80-81. He stated that the program itself could be sufficient, but he felt that the individual lacked the “commitment to make a serious effort for” his sobriety. *Id.* at 83. In addition, the DOE psychiatrist took issue with the individual’s claim that he has maintained sobriety since February 2002, because the individual has been less than forthright in the past about reporting the extent of his drinking. *Id.* at 82. Compare PSI 1 at 85; PSI 2 at 84 (individual reported last drink before February 2001 and November 2001, respectively, was in May 2000) with Psychiatrist’s Report at 4 (individual reported drinking on weekend but not to excess in June 2001; other sources concur in July 2001). Even assuming that the individual has maintained sobriety since February 2002, the DOE psychiatrist’s new diagnosis led him to state:

[A]lthough I said a year or two would be the time frame that I recommended for a time period to assure adequate evidence of rehabilitation or reformation, . . . given the things that I’ve said up to now, I think more in terms of two years from his last drink would be needed to show adequate evidence of rehabilitation or reformation, which would be like . . . eight months from now.

Tr. at 83-83 (actually, six months from the time of the hearing).

#### IV. ANALYSIS

##### **Criterion F: Falsification, Misrepresentation, and Omission**

As noted above, the individual denied three times to the local security office that he had been arrested for DWI in 1998. Two of those false reports occurred during PSIs, which are conducted to gather more complete information for consideration of an individual's eligibility for access authorization. The third report occurred when the individual incorrectly filled out a QNSP, which is also relied upon in making such determinations. He admitted that he had been arrested for DWI only when confronted with the fact that the local security office already knew about it. In addition, there is a striking discrepancy regarding the individual's most recent use of alcohol between statements he made during the February and November 2001 PSIs and statements he made to the investigator in June 2001 and to the DOE psychiatrist in April 2002. He told the local security office in his PSIs that his last drink had been in May 2000. He told the investigator he was still drinking, though moderately, in June 2001, and four sources interviewed by the investigator in July 2001 reported the same.

Criterion F describes a concern raised when a person has “[d]eliberately misrepresented, falsified, or omitted significant information from . . . a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . .” 10 C.F.R. § 710.8(f) (emphasis added). The DOE security program typically explains its concern about this kind of behavior in terms of trust. A person who makes false or misleading statements is not acting in a forthright and honest manner, and cannot be trusted to protect classified information and special nuclear material. *Personnel Security Hearing* (Case No. TSO-0044), 28 DOE ¶ 82,936 (October 9, 2003).

The individual does not challenge the facts as presented by the local security office. What I must consider in this case is whether the individual has presented sufficient evidence of mitigation, that is, evidence that the risk that the individual will falsify or withhold significant information from the local security office is so minimal that it is an acceptable risk to the national security. At the time the individual was confronted about his 1998 DWI, he admitted to the interviewer that he was willfully trying to cover up the fact that he had been arrested, because he was afraid he would lose his job. At the hearing the individual showed remorse for his actions and ascribed them to poor judgment. I am not, however, convinced that the individual has improved his judgment significantly:

Q. And I can understand . . . why you weren't straightforward with [the local security office], . . . but now I have to predict will you be straightforward with them in the future. . . . [I]f in 2005 you were stopped for another DWI, what can you tell me to convince the Department that you wouldn't cover up again? You would definitely be in at least as much trouble as you're in right now because it would be a third DWI--

A. Yes, sir.

Q. – and [Motor Vehicles] wouldn't like it, the Department wouldn't like it, . . . what would you do if that happened to you?

A. It won't happen to me. I feel it, I know it, it's not going to happen. I know . . . what happened in the past . . . and . . . I realize . . . this is not the way to conduct my life, no way. I mean, can I say a person grows up finally, or something snaps, or says, "Hey." I mean, a third DWI is not going to happen. That, I promised to me.

Tr. at 28-29 (questioning by hearing officer). I believe that the individual was clearly speaking sincerely when he made that statement. Nevertheless, considering all of the circumstances surrounding his history of falsifying and withholding information from the local security office, the sincerity of his intentions do not outweigh the risk to the national security that I perceive. The individual has the burden of convincing me that his behavior no longer represents a significant security risk. He has not produced evidence that convinces me that he will not withhold critical information from the Department in the future. His assurances that he will never be arrested for DWI in the future show commitment, to be sure, but are founded on desire rather than rehabilitation or reformation. They are not sufficient to convince me that he will communicate fully and honestly in his future dealings with the local security office. In my opinion, the evidence I have received in this proceeding does not mitigate the Department's legitimate concern for the national security that the individual's actions have raised.

#### **Criterion J: Alcohol Abuse or Dependence**

The Notification Letter states that a board-certified psychiatrist evaluated the individual and diagnosed him as suffering from alcohol abuse. Because the individual has been less than forthright in providing the local security office with accurate information about his alcohol consumption, the extent of his alcohol abuse or dependence is not entirely clear. Nevertheless, we know from the individual's own admissions that he has been arrested and convicted twice within the past six years for DWI, both times after long periods of reported sobriety. Moreover, the DOE psychiatrist first diagnosed the individual as suffering from alcohol abuse, then modified his diagnosis on the basis of more precise information to alcohol dependence. This derogatory information creates serious security concerns about the individual under Criterion J (alcohol abuse or dependence).

Excessive consumption of alcohol, even off the job, raises security concerns because of the possibility that a clearance holder may say or do something under the influence of alcohol that violates security regulations. *See Personnel Security Hearing* (Case No. VSO-0574), 28 DOE ¶ 82,907 (March 13, 2003); *Personnel Security Review* (Case No. VSA-0174), 27 DOE ¶ 83,005, *affirmed* (OSA 1998). In this case, the risk is that the individual's excessive use of alcohol might impair his judgment and reliability to the point that he will fail to safeguard classified matter or special nuclear material. It is appropriate for the DOE

to question a person's reliability when that person has a history of consuming alcohol excessively, and has been abstinent for only a relatively short period.

Since there is reliable, derogatory information that creates a substantial doubt concerning the individual's eligibility for access authorization, I need only consider below whether the individual has made a showing of mitigating facts and circumstances sufficient to overcome the DOE's security concerns under Criterion J. Because the hearing officer may recommend that an individual's access authorization be reinstated only if it "will not endanger the common defense and security and will be clearly consistent with the national interest," 10 C.F.R. § 710.27(d), the individual must provide convincing evidence mitigating those security concerns.

The record reflects the following mitigating facts. The individual stated at the hearing that he continues to abstain from alcohol. Since he stopped, by his account, in February 2002, after his second DWI, he had been sober for 17 months at the time of the hearing. He had also completed 60 hours of court-ordered treatment at the substance abuse recovery center. Upon completion of that course of treatment, roughly two weeks before the hearing, he had signed a "contract" with the center committing himself voluntarily to attending sessions at least once a month, and had already participated in two sessions. He further testified that he has the support of his wife and parents, who are non-drinkers. Additional support is available in the form of a 24-hour, seven-day hotline operated by the substance abuse recovery center.

Despite these showings of progress, my opinion is that the individual has not successfully mitigated the national security concerns raised by the local security office. The DOE psychiatrist expressed his concern at the hearing that the individual's course of treatment was not sufficiently intense to constitute adequate rehabilitation. Tr. at 89. Upon hearing all the testimony, the DOE psychiatrist, who at the time of his evaluation of the individual was unsure whether to diagnose alcohol abuse or alcohol dependence, concluded that the individual was in fact alcohol dependent. He further determined that the period of treatment required for rehabilitation should be two years rather than "one or two," as he had expressed in his report. Even if I accept the individual's assertion that he took his last drink in February 2002, his rehabilitation progress falls substantially short of the DOE psychiatrist's recommendations, both in duration and, more significantly, in intensity and level of commitment. Finally, I am not entirely convinced that the individual has been completely abstinent for as long, and as consistently, as he claims. Although he appeared at the hearing entirely sincere in his intentions to maintain sobriety, his long history of withholding from the local security office his full involvement with alcohol in the past raises doubts in my mind as to whether I have heard the whole truth or only a version from which some information has been willfully or subconsciously omitted.

After considering all the evidence in the record, it would be premature for me to find that the individual is rehabilitated or reformed from his alcohol dependence at this time. The individual has not demonstrated in the course of this proceeding that the risk of relapse to excessive alcohol consumption is acceptably low. Consequently, the individual has not mitigated the DOE's security concerns under Criterion J regarding his history of alcohol dependence.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has not presented evidence that warrants restoring his access authorization. The individual has not demonstrated that restoring his access authorization will not endanger the common defense and will be clearly consistent with the national interest. Therefore, the individual's access authorization should not be restored.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: January 7, 2004