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October 17, 2003
DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: May 6, 2003
Case Number: TSO-0043

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 Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth below, it is my decision that the individual's security clearance be restored.

I. Background

The individual is employed by a contractor at a DOE facility and held a security clearance as a requirement of his job. In April 2002, the individual reported to DOE security that he had been arrested for Driving Under the Influence (DUI) and in June 2002, DOE conducted a Personnel Security Interview (PSI) with the individual. Exhibit 5-1 (PSI). Based on that information and the diagnosis of a DOE consultant-psychologist, DOE suspended the individual's security clearance. In January 2003, DOE notified the individual that his clearance would remain suspended until the resolution of the matters which created the security concern. Notification Letter (January 13, 2003).

The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h), (j) and (l) (Criteria H, J and L). The DOE Operations Office invokes Criterion H on the basis of information that the individual has an illness or mental condition of a nature which causes, or may cause, a significant defect in his judgment or reliability. In this regard, the Notification Letter states that a licensed clinical psychologist diagnosed the individual in September 2002 as suffering from "Alcohol-Related Disorder, Not Otherwise Specified (NOS)" without adequate evidence of rehabilitation or reformation. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol

abuse. This allegation was based on the aforementioned diagnosis. Criterion L is invoked when a person has allegedly engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. The DOE Operations Office invoked Criterion L based on alcohol-related arrests in 1982, 1984, 1986, 1987 and 2002.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On May 8, 2003, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychologist (DOE psychologist) testified on behalf of the agency. The individual testified and also elected to call two colleagues, a fellow Alcoholics Anonymous (AA) member, and the DOE plant psychologist as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances 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 a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving 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 due deliberation,

it is my opinion that the individual's access authorization should be restored because I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual has a history of alcohol arrests. In 1982, he was arrested for DUI, served two days in jail and attended DUI school. Ex. 1-4. In 1984, he was arrested for DUI, served 10 days in jail, and paid a fine. *Id.* In 1986 he was arrested for Public Drunkenness, and paid a small fine. In 1987, he was arrested for DUI and the charge was reduced to Reckless Driving. PSI at 15. The individual never sought out or received any treatment for his drinking, other than the DUI schools as ordered after his first and third arrests. *Id.* In 1989, the individual was hired by a DOE contractor in a position that required a security clearance. Ex. 5-2. In 1990, after a PSI, the individual was granted a clearance. Ex. 1-5. From 1986 until 1995, the individual alleged that he abstained from alcohol. PSI at 25-26. After 1995, the individual drank only a few times, but at those times drank to the point of intoxication. PSI at 22-23.

In April 2002, the individual's wife asked him for a divorce. PSI at 19; Tr. at 55. He was distraught, and made an appointment for counseling through the Employee Assistance Program (EAP). PSI at 30. The same month his sister, the last remaining member of his nuclear family, died. PSI at 19; Tr. at 55-56. Later in April, the individual was arrested for DUI. Ex. 5-1 at 6. He reported the incident to DOE immediately. *Id.* The individual attended a court-ordered 12 hour course and paid a fine. *Id.* at 13. The individual's manager recommended that the individual speak to the plant psychologist, and a week after the arrest, the individual met with the plant psychologist. PSI at 29, 31-37. In May 2002, the individual began to see a private counselor recommended by the plant psychologist, and continued these psychotherapy sessions bi-monthly through the date of the hearing. PSI at 29-31, 34-37; Ex. 2-3; Indiv. Ex. 4. At the urging of the plant psychologist, the individual also began to attend AA meetings. PSI at 32. The individual attended meetings regularly, almost daily. PSI at 34. In June 2002, the individual's wife moved from the family home and took the children with her. PSI at 32. As a result of the recent arrest, DOE conducted a PSI with the individual in June 2002. PSI. During the PSI, the individual agreed to a psychological evaluation. PSI at 37-38.

In August 2002, the individual met with and was evaluated by the DOE psychologist. Ex. 2-1 (Evaluation). The DOE psychologist administered several tests, conducted a clinical interview, and reviewed the individual's personnel security file and counselor's records. Evaluation at 2. He also conducted a follow-up telephone interview with the individual. *Id.* The DOE psychologist concluded that the individual demonstrated evidence for a diagnosis of "Alcohol-Related Disorder, Not Otherwise Specified," supported by the individual's clinical history. *Id.* at 9. The psychologist also concluded that the individual relapsed into an episode of "stress alcohol use" in the spring of 2002 due to the death of his sister and his marital problems. *Id.* at 10. The psychologist concluded that even though the individual showed "evidence of

sincere and very positive effort towards rehabilitation,” there had been insufficient time for rehabilitation. *Id.* The psychologist recommended the following steps to demonstrate adequate evidence of rehabilitation:

- Participation in AA two to three times per week for the first six months, and then once or twice per week; after that, with documented evidence of use of a sponsor, for at least one year
- Participation in individual psychotherapy for at least one year, with a focus on alcohol -related issues, relapse prevention, and personal adjustment issues
- Occasional monitoring by the DOE plant psychologist
- Sobriety for at least one year

Evaluation at 10. In the alternative, a period of two years of abstinence would demonstrate reformation. *Id.* The psychologist concluded that the individual’s mental condition (Alcohol-Related Disorder NOS) might cause a significant defect in his judgment or reliability until he is fully rehabilitated or reformed. Evaluation at 11. However, he also found that the individual had a good prognosis for recovery. *Id.*

In January 2003, the DOE issued a Notification Letter to the individual advising him of his procedural rights in the resolution of his eligibility for a security clearance. The individual requested a hearing on March 15, 2003.

B. DOE’s Security Concern

The excessive use of alcohol raises a security concern because of its intoxicating effect. “Because the use of alcohol at the very least has the potential to impair a user’s judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases.” *Personnel Security Review*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Review*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000).

The alcohol had the effect of impairing the individual’s judgment such that he operated a motor vehicle while intoxicated, violated the law, and was arrested. In this case, the alcohol intoxication caused the individual to exhibit unusual conduct that led to multiple alcohol-related arrests. Therefore, DOE’s security concerns are valid and the agency has properly invoked Criteria H, J, and L in this case.

C. Evidence of Rehabilitation and Reformation

In an effort to establish his full rehabilitation, the individual presented evidence that he had satisfied each of the four parts of the DOE clinical psychologist’s recommendation: (1) participation in AA; (2) participation in individual psychotherapy; (3) occasional monitoring by the plant psychologist; and (4) one year of sobriety. *See* Sec. I. A., *supra*. At the end of the hearing, the DOE psychologist offered an

updated opinion – that the individual had indeed provided adequate evidence of rehabilitation from the psychologist’s earlier diagnosis of Alcohol Disorder NOS. Tr. at 66, 73.

1. Participation in AA

The individual testified at the hearing that he had attended AA almost daily since a week or two after his arrest, and that he plans to continue attending AA. Tr. at 57, 62. He has received mementos of milestones in his sobriety, including a one year medallion. Tr. at 65. According to the testimony of the plant psychologist, the individual has an excellent prognosis for rehabilitation because he is “extremely embedded in AA” and has a good support system in his membership in the group. Tr. at 33. Two of the individual’s colleagues testified that the individual regularly discussed his attendance at AA. Tr. at 47, 42. The individual’s sponsor also submitted a letter confirming the individual’s attendance at AA and his active participation. *Indiv. Ex. 2.*

I found the hearing testimony of one witness in particular to be the individual’s strongest evidence in support of not only the quantity of his participation in AA, but, more important for his sustained recovery, the *quality* of his participation in that organization. This witness was a fellow AA member, and had known the individual for one year. Tr. at 52. The witness not only has 19 years of recovery himself, but he is also currently the director of a local intensive outpatient substance abuse center and has been a state certified substance abuse counselor for 12 years. Tr. at 50. The witness has attended three to four meetings weekly throughout his recovery and testified that, in the past year, the individual was present every time that he attended a meeting. Tr. at 51. He emphasized that the individual stayed late after meetings to talk to newcomers who might be having problems, volunteered his time to help out at meetings, and often ran the office at the meeting site. *Id.* He described how the individual had changed over the year from a passive participant to actively helping others. *Id.* Further, the witness testified that his presence at the hearing was only the second time in 19 years that he had appeared as a witness for another AA member. Tr. at 50. He was moved to volunteer to testify on behalf of the individual because he has seen “wonderful things happen” with the individual. *Id.*

2. Participation in Individual Psychotherapy

The individual testified at the hearing that he had been attending counseling sessions with a local counselor since being referred to her by the plant psychologist. PSI at 29; Tr. at 58, 64. The counselor submitted progress notes and a letter confirming that the individual began psychotherapy in May 2002, and has attended psychotherapy bi-monthly from August 2002 through August 2003. *Ex. 2-3; Indiv. Ex. 4.* According to the counselor the individual has “done an excellent job of resolving personal issues through the therapeutic process” and “has successfully accomplished his therapeutic goals.” *Indiv. Ex. 4.* The individual testified about the positive impact of the counseling on his life. Tr. at 58. The plant psychologist also confirmed the positive impact of the counseling sessions on the individual’s behavior. Tr. at 28, 33.

3. Occasional Monitoring by the Plant Psychologist

The plant psychologist first met with the individual in May 2002, and has seen him monthly since then. Tr. at 28. During their sessions the psychologist became aware of the individual's continuing involvement in AA, with a sponsor. Tr. at 28. He also was impressed with the individual's efforts in recovery and the progress that the individual has made in terms of understanding his alcoholism. Tr. at 29. The plant psychologist testified that the individual "has made very sound progress in terms of understanding his disease." Tr. at 29. He also testified at the hearing that the individual now accepts abstinence as his only option. *Id.* The psychologist noted that the individual coparents well with his ex-wife, and that he had been impressed with the individual from the outset because the individual showed no initial "resistance, denial or avoidance" of the fact that he had a problem and needed help. Tr. at 35-36. He testified that the individual does not have a significant defect in his judgment or reliability. Tr. at 32.

4. Sobriety

The DOE psychologist had recommended that the individual maintain sobriety for at least one year in order to demonstrate rehabilitation from the diagnosis of Alcohol Disorder Not Otherwise Specified. Evaluation at 10. The individual has done this. He testified that he received a one year sobriety medallion from his AA group. Tr. at 65. He also testified that he has abstained since his arrest, which occurred 16 months prior to the hearing. *Id.* According to the individual, he has learned from his treatment that he must abstain in order to stay out of trouble, and he credits the treatment program with empowering him to maintain sobriety without difficulty. Tr. at 58-60. The witness who attends AA meetings with the individual (and is himself a substance abuse counselor) testified: "[T]he business I'm in I'm trained to identify symptoms and problems. I have never had a day where I was concerned about [the individual's] sobriety when I saw him, as far as his reactions, his motor skills, there are so many different red flags that can be seen, I have never had a concern." Tr. at 52.

Both psychologists found the individual to be honest and credible. Tr. at 29; Evaluation at 7. I also found his testimony at the hearing to be credible. The individual's testimony about his continued abstinence is supported by witness testimony. *Indiv. Ex.2*; Tr. at 81. *See Personnel Security Hearing*, OHA Case No. VSO-0404, 28 DOE ¶ 82,844 (2002) (accepting testimony of individual and witnesses regarding length of individual's abstinence). Therefore, I believe the individual's contention that he has abstained from alcohol for 16 months.

5. Additional Testimony

The individual also offered the testimony of two colleagues as evidence of his rehabilitation and reformation. Both spoke highly of the individual as a valuable employee, and stated that they had never seen him drink alcohol. The first witness has worked with the individual for 10 years. Tr. at 45. She testified that he has been very open about his problem with alcohol, and she often calls on him to counsel other employees who may have similar problems. Tr. at 47. The second witness socializes with the individual, has known him

nine years, but had never seen him drink alcohol. Tr. at 40. The witness testified that the individual talks often about AA and how it has helped him. Tr. at 42.

D. Updated Opinions of the DOE Psychologist and the Plant Psychologist

At the conclusion of the hearing, the DOE psychologist offered an updated opinion regarding the mitigation of the security concerns. In summary, the DOE psychologist testified that:

“ I feel comfortable in saying that he has established a satisfactory rehabilitation program. I would like for him to continue all of the efforts that he and his providers think are appropriate.”

Tr. at 73. The DOE psychologist also testified that he did not believe that the individual had a significant defect in his judgment and reliability. *Id.* The plant psychologist agreed with the conclusion of the DOE psychologist that the individual had been rehabilitated from his alcohol problem and that he did not currently have a defect in judgment or reliability. *Id.* at 74. The plant psychologist went on to state that “[the individual is] living the program as well as anybody that I have seen. It is not, it does not appear to be artificial. It is a genuine part of him and that is one of the best prognostic indicators of long term success with sobriety.” *Id.* at 75.

In a Part 708 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, both mental health professionals persuasively testified that the individual had presented adequate evidence of rehabilitation from the diagnosis of Alcohol Disorder Not Otherwise Specified, and that he did not have a significant defect in his judgment or reliability. Thus, I find that the individual has mitigated the security concerns of Criteria H and J. As regards Criterion L, the two arrests at issue occurred while the individual was under the influence of alcohol. Our cases require that an individual demonstrate rehabilitation or reformation from an alcohol problem in order to mitigate the concerns raised by alcohol-related arrests. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). As discussed above, the individual has demonstrated the requisite degree of rehabilitation. Therefore, I further find that the individual has mitigated the Criterion L security concerns.

II. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (h), (j) and (l) in suspending the individual's access authorization. The individual has, however, presented adequate mitigating factors, set forth above, that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: October 17, 2003