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August 3, 2004

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-0045

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 Local Security 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 be restored.

**I. Background**

The Individual is employed by a contractor at a DOE facility. The Individual self-reported an arrest for Driving While Intoxicated (DWI) on October 26, 2001. Once the Local Security Office received this report, it called the Individual in for a Personnel Security Interview (PSI). DOE Ex. 8. The Individual was subsequently referred to a DOE consultant psychiatrist (DOE Psychiatrist). DOE Ex. 5. The DOE Psychiatrist interviewed the Individual and diagnosed him as suffering from Alcohol Abuse. DOE Ex. 3. The DOE Psychiatrist's opinion was based on the interview, the Individual's Personnel Security File, and an earlier psychiatric evaluation conducted in August 2002. The DOE Psychiatrist further opined that the Individual had not demonstrated sufficient evidence of reformation or rehabilitation.

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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.

Because the derogatory information concerning the Individual had not been resolved, the Local Security Office obtained authority to initiate this administrative review proceeding. The Local Security Office then issued a Notification Letter to the Individual, citing the DOE Psychiatrist's diagnosis of Alcohol Abuse as the derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J).<sup>2/</sup>

Upon receipt of the Notification Letter, the Individual requested a hearing. The DOE transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. 10 C.F.R. § 710.25(a), (b). I convened a hearing in this matter within the time frame prescribed by the DOE regulations. 10 C.F.R. § 710.25(g).

At the hearing, the Individual was represented by a union steward. He offered his own testimony as well as the testimony of his counselor, his supervisor, and a previous second line supervisor. The Local Security Office presented one witness, the DOE Psychiatrist. The local DOE Office also entered 19 exhibits into the record.

## **II. Standard of Review**

Under Part 710, 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 properly 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,

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<sup>2/</sup> 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).

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 that the security concerns raised by the derogatory information have been mitigated. Consequently, it is my decision that the Individual's access authorization should be restored.

### ***III. Findings of Fact and Analysis***

The derogatory information concerning Criterion J centers on the Individual's diagnosis of Alcohol Abuse. Such a diagnosis always raises security concerns. In response to the concerns, however, the Individual maintains that he has changed his lifestyle and no longer drinks. The relevant facts in this case are not in dispute.

The Individual reported that he had been arrested for DWI on October 26, 2001. Based on this report, the Local Security Office then interviewed the Individual and concluded that he should be evaluated by a DOE Psychiatrist. DOE Exhibit 8 (DOE Ex.). In reaching this decision, the Personnel Security Specialist relied on a previous evaluation conducted by a different DOE consulting Psychiatrist and two previous DWIs on the Individual's record.

Subsequent to interviewing the Individual, the DOE Psychiatrist wrote an evaluative report on the Individual describing his findings. DOE Ex. 3. The report states that the DOE Psychiatrist examined the Individual and administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). The Individual was also given a number of laboratory tests. All the test results were normal and showed no alcohol or drug use. Based upon the examination and his review of the DOE records, the DOE Psychiatrist determined that the Individual met one of the diagnostic criteria of the Diagnostic and Statistical Manual, 4th Edition (DSM-IV), for "Alcohol Abuse." *Id.* at 7. In the Report, he also opined that the Individual had not shown adequate rehabilitation, and he would recommend that a period of two years of sobriety elapse from the time the Individual began treatment for his alcohol problem for the Individual to be considered rehabilitated. *Id.* at 10. The DOE Psychiatrist recommended that the Individual continue with his weekly outpatient treatment for at least a year, to be followed by group treatment, such as Alcoholics Anonymous (AA). *Id.* at 10.

### ***IV. The Hearing***

At the hearing, the DOE Psychiatrist elaborated on his diagnosis. Pursuant to the DSM-IV, for someone to be diagnosed as abusing alcohol, an individual must meet one or more criterion from a list of criteria for the diagnosis of alcohol abuse. *Id.* at 8. First, he determined that the Individual met Criterion (2): "recurrent alcohol use in situations in

which it is physically hazardous.” His three DWI citation fulfill Criterion (2) because driving an automobile can be physically hazardous. *Id.* He also concluded that the Individual had met Criterion (3): “recurrent alcohol-related legal problems.” *Id.* Again, the three DWIs fulfill this criterion. Finally, the DOE Psychiatrist opined that the Individual had met Criterion (1): “recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home.” At the hearing, he stated that the Individual’s continued alcohol use and driving in the face of warnings by DOE fulfilled Criterion 1. Transcript of Hearing (Tr.) at 61.

The Individual’s counselor testified for the Individual. He stated that the Individual first came to see him as a court referral for a DWI. *Id.* at 26. He stated that he has met with the Individual 50 times over a year and a half period. He believes that the Individual is sincere in his desire never to drink again. He recommended that the Individual never consume alcohol again. *Id.* at 28. The Individual’s counselor disagreed with the DOE Consulting Psychiatrist’s assessment that the Individual was in denial about his alcohol problem. *Id.* at 30. He indicated that he did originally try to get the Individual to go to Alcoholics Anonymous, but it did not work out because of transportation issues. *Id.* at 31. The Individual’s counselor testified that he believes the Individual can handle his sobriety without assistance. *Id.* at 33. He based this assessment on a number of factors. One is that the Individual was recently diagnosed with Multiple Sclerosis. *Id.* The second is that the Individual believes that he is at a different time or station in his life. *Id.* The third is his desire to avoid problems with his employment that have arisen caused by alcohol. *Id.* at 34. The Individual’s counselor does not believe that he is a risk to national security. *Id.* at 37-39.

Two of the Individual’s supervisors also testified. Both supervisors praised his work. One of the supervisors is also his brother and drives him to work. He indicated that the Individual has not consumed alcoholic beverages at family gatherings since his last DWI. However, he stated that alcohol is not usually part of the family gathering. He also drives the Individual to counseling sessions. He believes the Individual is committed to his sobriety. *Id.* at 85-87. His other supervisor, who was one step removed from the Individual testified as to his level of work. The supervisor stated that he did not have any knowledge of the Individual ever coming to work intoxicated or with the apparent aftereffects of having had too much to drink. *Id.* at 73.

The Individual testified on his own behalf. The Individual testified that he last consumed alcohol on October 26, 2001, the date of his citation. *Id.* at 14. He testified that he would like to attend AA, but transportation issues make it impossible. *Id.* at 16. His driving privileges were terminated for ten years because of the DWI. *Id.* at 17. He could have an ignition lock system installed on his car that would allow him to drive, but he hasn’t had that done because of financial concerns and because he has a car pool available to get to work. *Id.* at 21-22. He continued that he intends to abstain from drinking because of his

employment problems and his Multiple Sclerosis. He confirmed his counselor's testimony that he is seeing him about once a week. *Id.* The Individual stated that he knows that AA helps. He is not against attending, he just does not have a way to get to a meeting, as there are none in his small town and he cannot drive. *Id.*

#### ***V. Findings and Conclusions***

After reviewing the expert psychiatric testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does have an alcohol problem that raises a security concern. However, I find that the Individual's almost two years of sobriety provides adequate evidence of rehabilitation or reformation.<sup>3/</sup> I was particularly impressed with the candid testimony of the Individual's counselor in support of the Individual's claim of sobriety for an extended period.

Furthermore, as he noted in his defense, the Individual's family life is stable. He has the support of his extended family, including his brother, to his continued sobriety. He does not attend Alcoholics Anonymous meetings, as recommended by the DOE Consultant Psychiatrist, even though this would give him a stronger support system. However, because there are no meetings in his town, and he does not drive, he cannot easily get to a meeting. The Individual has continued with his outpatient treatment. His counselor did not believe he was avoiding AA, merely unable to attend. Unlike the DOE Consultant Psychiatrist, his counselor did not believe the Individual was in denial about his alcohol problem. I agree. The Individual stated that he had a problem with alcohol. His lack of a driver's license also restricts his ability to maintain the lifestyle which led to his problems with alcohol. In the past, he would stop after work on payday and drink with co-workers. Since he carpools with his brother, he is unable to do so. Further, the Individual showed no drug or alcohol use in tests that were conducted at the time of the interview with the Doe Consultant Psychiatrist.

In sum, I was convinced by the expert testimony of the Individual's counselor and his almost two years of sobriety. To the extent the DOE Psychiatrist's report raised a security concern, I find that concern has been mitigated.

#### ***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. However, I find that doubt is minimal, and I also find sufficient evidence in the record to mitigate any concern raised. Therefore, I conclude that restoring the Individual's access authorization would

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<sup>3/</sup> At the time of the hearing, the Individual was three months short of two years of sobriety.

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 be restored.

Janet R. H. Fishman  
Hearing Officer  
Office of Hearings and Appeals

Date: August 3, 2004