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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-0048

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX ("the individual") to hold an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR §710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In view of the record and, in particular, medical testimony given in a hearing held on August 14, 2003, I have concluded that the individual should be granted access authorization.

Background

Application was made for the individual – who is employed by a contractor at a DOE facility – to be granted an access authorization (security clearance). A background investigation and Personal Security Interview (PSI) were conducted. From these came a recommendation for a Psychiatrist's evaluation that was conducted in June 2002. As a result of the investigation, PSI and evaluation, on January 13, 2003, a Notification Letter was issued by the local DOE security office stating that, based on the criteria set forth in 10 CFR §710.8, substantial doubt existed as to the individual's eligibility for a security clearance.

¹ 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 variously in this Decision as access authorization or security clearance.

Notification Letter

The Notification Letter states that under the criterion found at 10 CFR §710.8, paragraph (j) the individual “is a user of alcohol habitually to excess and is suffering from alcohol dependence, and there is not yet adequate evidence of rehabilitation or reformation.” Notification Letter Attachment at 1. The letter also states that under paragraph (k) of the same section “Information in the possession of the DOE indicates that [the individual] has trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970.” *Id.* at 2. This allegation involves the abuse or misuse of prescription drugs.

Based in part on the allegations under criteria (j) and (k), and in part on statements made during the PSI, the Notification Letter states that pursuant to §710.8(l) the individual “has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security.” *Id.* at 3.

Record

The record -- largely uncontested -- shows that as early as 1991 the individual was diagnosed as alcohol dependent with a history of alcohol use. At that time the individual began to abstain from alcohol and 16 months later was found rehabilitated and reformed. The individual relapsed in 1995 and was diagnosed as having Major Depression and a History of Alcohol Abuse. He then voluntarily began participation in the DOE Substance Abuse Program Referral Option (SAPRO) but his employer-sponsored participation was discontinued after he was part of a general employment lay off on June 6, 1996. *Id.* at 2.

After six years of sobriety, the individual resumed drinking alcohol in November 2001, and on the third of the month was admitted to the XXXXXXXXXXXXXXXX Hospital after being found “passed out due to alcohol and prescribed medication, and holding a gun.” He tested positive for alcohol and barbiturates. His provisional DSM-IV Diagnosis was “Major Severe Depression, rule out Bipolar; Alcohol Dependency by History.” His Discharge Diagnosis was “Mood Disorder, Not Otherwise Specified; Post Traumatic Stress Disorder (PTSD), Mild; Alcohol (ETOH) Abuse, partial recovery.” *Id.* at 2. A further period of abstinence followed.

In February 2002, the individual relapsed and consumed alcohol for three days and then relapsed again in April. At that point he voluntarily committed himself to an outpatient program at the XXXXXXXXXXXXXXXX Hospital. The individual’s last consumption of alcohol and prescription drugs was on April 9, 2002. Letter from DOE consulting psychiatrist dated August 5, 2002, at 2. The individual was voluntarily admitted to XXXXXXXXXXXXXXXX hospital in April and, according to all testimony and the record, has not consumed alcohol or abused prescription drugs since that time.

On July 31, 2002, the individual was evaluated by a DOE-sponsored Psychiatrist who “indicated that the individual is a user of substances habitually to excess and is suffering from polysubstance dependence, in partial remission.” Although the individual had stopped drinking and abusing prescribed drugs, because only four months had passed since the April 2002 relapse, “there (was) not yet adequate evidence of rehabilitation or reformation.” *Id.* at 3. Concerning criterion (k), the psychiatrist found that, periodically, over a period of years, the individual had used valium and pain killers “more quickly than they were supposed to be taken” and may have gotten them “by complaining of pain that was not present.” *Id.* at 3. This statement also forms a part of the basis for the allegations under criterion (l).

In response to the Notification Letter, by letter dated February 11, 2003, the individual requested a hearing. The case was referred to this office for administrative review on May 6, 2003, and I was designated Hearing Officer.

Hearing

The hearing was held on Thursday, August 14, 2003, the first date on which all parties could attend. Appearing for DOE were Counsel, a DOE-sponsored psychiatrist, and a DOE Security Specialist. On behalf of the individual, his Alcoholics Anonymous (AA) sponsor as well as his psychotherapist and counselor testified, as did the individual himself.

DOE Security Specialist

The DOE Security Specialist testified as to the accuracy of the record underlying the Notification Letter. She also testified as to DOE concerns at the individual’s long history of alcohol abuse, the number of recovery attempts and, in particular, the likelihood of relapse. In addition, the security specialist spoke to the issues of trustworthiness and honesty implicit in the abuse of prescription drugs and the seemingly misleading statements that appear in the transcription of the PSI. Transcript of Hearing (*Tr.*) at 8-18.

The Individual’s AA Sponsor

The individual’s AA sponsor testified that the individual has been attending AA meetings four times a week since they met in April 2002. In addition, the sponsor and the individual speak three or four times a week and also meet once or twice each week. This schedule had been followed during the sixteen months prior to the hearing. The sponsor stated that the individual had been clean and sober for those sixteen months, that he believed the individual would remain so, and that the individual would be successful in his recovery in the AA program. *Tr.* at 39-44.

The Individual's Therapist

The individual's therapist is a "licensed professional counselor and a certified addictions counselor, Level III." *Tr.* at 45. She is also "a nationally certified master's addiction counselor (specializing) in addiction" for the last 19 years. *Id.* The therapist has been seeing the individual regularly since May 2002, and has met with the individual and his wife on two occasions. Since she has been seeing him, she testified that the individual has been clean and sober as to prescription drugs and alcohol. The therapist's professional opinion is that the individual is alcohol dependent but in full remission. *Id.*

The Individual's Spouse

Although not appearing in person, the individual's spouse has provided a sworn, notarized statement affirming that the individual "has been continuously clean and sober since April 9, 2002 . . . attending AA meetings, working the 12 steps of AA . . . has two [AA] sponsors (and) "occasionally attends Alanon meetings with me." Notarized Statement dated August 28, 2003.

The DOE Psychiatrist

The DOE-sponsored psychiatrist testified extensively and, in effect, re-interviewed and evaluated the individual during the hearing. Based upon the responses and testimony of the individual, the AA sponsor and the individual's psychotherapist – and the fact that the individual has been without alcohol or prescription drugs for 17 months – the DOE psychiatrist diagnosed the individual as alcohol dependent in full remission (as contrasted with his July 31, 2002 diagnosis of partial remission). *Tr.* at 57, 77. The psychiatrist also stated that at the time of the hearing the individual was "in a state of rehabilitation." *Tr.* at 77.

At the hearing, the DOE psychiatrist also stated that "based on [the individual's] history of relapses, he is at risk for another relapse." *Tr.* at 77. Nevertheless, in response to a question from DOE Counsel – "[d]o you feel better about a relapse after hearing some of what [the individual's] gone through than you would have felt before you heard it?" -- the DOE psychiatrist testified that the individual is:

[I]n a better place now than he was in . . . than April 2002 when he had the relapse. He has shown stability for 16 months, and honesty and abstinence. He seems to be in a therapy, which sounds like he will continue in. He's in a program with AA that seems like he's continuing in. He's not using drugs. He's not taking medication. He's not found medication to be effective, in fact, medication has made him worse.

He tried Psychiatry before. The Psychiatrist gave him medication that, in fact, was misguided. So not seeing a Psychiatrist at this point – not seeing *that* Psychiatrist at this point is a good idea. (Emphasis supplied) There are good Psychiatrist[s], although he's not found one. One Psychiatrist gave him antidepressants that made him worse, but that's not unusual; given antidepressants make a lot of people worse.

But at this time he does have a psychotherapist that understands him. He has a sponsor that understands him. And it seems like he will continue with that. He has a safety plan in terms of people he can call if he runs into trouble, and he seems to be honest about this at this hearing. I would guess that his wife wasn't here having been through too many of these and having been crushed too many times, and perhaps doesn't want to get crushed another time. That would be my reading on that from what he just said, so I can understand that part, too. If I were to take a chance on somebody, I probably would take a chance on him.

Tr. at 76-79.

Standard of Review

Applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the 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 CFR § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct, set out in § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; how recently and often the conduct occurred; the age and maturity of the individual at the time of the conduct; whether participation was voluntary; rehabilitation, 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.

A DOE administrative review proceeding under 10 CFR Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 CFR § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein.

The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 CFR § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the concerns in the Notification Letter, and should be granted access authorization.

Analysis and Recommendation

There are two areas of concern: The individual's alcohol and prescription drug abuse problems and the criterion (I) concerns – dishonesty and trustworthiness – involved in obtaining and misusing prescription drugs and making apparently false statements during the February 20, 2002 PSI. As Hearing Officer my view is that criterion (I) concerns that are based on an individual's misstatements are the most serious because dishonesty and duplicity go directly to the core of security. Hence these concerns will be addressed first.² I find that the alleged falsifications all involve innocent miscommunications, misunderstandings and incomplete record documentation that do not bar issuance of a security clearance.

Criterion (I)

The first criterion (I) concern involves the causes and nature of the individual's admission to the XXXXXXXXXXXXXXXX hospital facility.

According to the attachment to the Notification Letter, the individual "stated during a PSI conducted on February 20, 2002, that he has not had any alcohol since he went through the Substance Abuse Referral Program Option in 1996." Notification Letter at 4. To show that this is false, several instances of alcohol consumption occurring after 1996 are enumerated. The Notification Letter also alleges that during the PSI the individual claimed that he voluntarily sought treatment at XXXXXXXXXXXXXXXX hospital, whereas documents provided by the Hospital show that the individual was involuntarily admitted.

A brief chronology from the official record is helpful:

- In 2001 the individual "had been to a dentist and received painkillers." *Letter from DOE psychiatrist, August 5, 2002, at 2.*
- In November 2001 – a few months after visiting the dentist -- the individual drank after six years of sobriety and was admitted involuntarily to the XXXXXXXXXXXXXXXX hospital. *Id.*
- More than three months later, on February 13, 2002, the individual voluntarily admitted himself to outpatient treatment at XXXXXXXXXXXXXXXX. *Letter from the individual, February 11, 2003.*

² Of the bases for the criterion (I) allegations listed in the Notification Letter, the third stems from the individual's alcohol and prescription drug abuse. Those concerns will be subsumed in the discussion of the abuse matters.

From this chronology, it is clear that there are two hospital visits involved and that the dentist visit is a separate matter that predates the earlier hospital visit by several months.

I find the transcription of the February 20, 2002 PSI to be disjunctive and confused, the interviewer and the individual often talk at cross-purposes about different events, each thinking the other is talking about the same subject. These are the seeds of the criterion (l) charges. In summary, in the PSI the two XXXXXXXXXXXXXXXX hospital admissions – one voluntary and the other not -- are taken as a single involuntary admission, while abuse of the prescription drugs he obtained from the months-earlier dental visit is taken to be the cause for the involuntary admission. Exacerbating all this is that in response to the record release executed by the individual, the XXXXXXXXXXXXXXXX hospital provided *only* material pertaining to the November 2001 involuntary admission. In the face of all this, in summarizing the PSI, the interviewer understandably concluded that:

[R]ecord information is discrepant from the subject's statements to interviewer. He stated that in September of 2001, he had some dental work done. He was prescribed Vicadin and Percocet, which made him feel twitchy and lousy. He was afraid of any "overuse" and voluntarily went to XXXXXXXXXXXXXXXX hospital to find ways to help him cope with any medication 'overuse'. As the record shows the subject was [involuntarily] admitted for an attempted suicide and overdoses of barbiturates."

DOE Exhibit 5.

Later this finding was incorporated into the Notification letter and the individual responded "I began treatment at XXXXXXXXXXXXXXXX on Feb. 13, 2002. The ambulance (admission) to XXXXXXXXXXXXXXXX for Alcohol and drug overdose was on Nov. 3, 2001. Therefore these are two different incidences." *Letter from the individual to the DOE Personal Security Specialist, February 11, 2003.*

Based on my review of the record, I accept the individual's explanation and find that this criterion (l) allegation involves only miscommunication compounded by the incomplete documentation furnished by the XXXXXXXXXXXXXXXX Hospital.

The second criterion (l) concern involves other alleged misstatements by the individual during the February 20, 2002 PSI.

According to the Notification Letter, the individual:

[S]tated during a PSI conducted on February 20, 2002, that he has not had any alcohol since he went through the Substance Abuse Referral Program Option in 1996. Record information from XXXXXXXXXXXXXXXX Hospital indicates [the individual] tested positive for alcohol on November 3, 2001, and that he consumed one pint of alcohol on November 3, 2001.

Notification Letter at 4.

The individual responded:

. . . at the time I [voluntarily] entered XXXXXXXXXXXXXXXX I was interested in relapse prevention from both Prescription drugs and alcohol. I recall admitting this (during the PSI). The other part about not having alcohol since 1996 I do not recall being asked or mentioning. It may have been said but (was) definitely unintentional. One only need to look at my meticulous recorded admission to the best of my ability of substance use/abuse. I have no intention or purpose in misleading or covering up or [lying] about any of this.

Letter from the individual to the DOE Personnel Security Specialist, February 11, 2003.

As with the West Pines admissions, the PSI transcription is muddled as to what was and was not said to transpire after the individual was part of a general employment lay off in 1996, and what the individual was representing as the term of his abstinence from alcohol. In any case, in order to fully resolve these concerns, following the hearing, I asked the individual to explain the relevant portions of the PSI transcript. He responded:

1. The relapses of Nov. 3, 2001, Feb. 6, 2002 and April 4, 2002 are correct and have been discussed with XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX (EAP Representative) in my letter to XXXXXXXXXXXX on Feb. 11, 2003 and during my hearing on Aug. 14, 2003.
2. The exchange during the Feb. 20, 2002 interview was near the end of the interview and I apparently misunderstood the questioning to address the amount of time I was sober in AA since my SAPRO program and my documented periods of relapse. I was sober almost six years at the time of the first relapse as correctly recorded in the interview. However, [after] re-reading the exchange [it] appears that I was continuously sober up to the date of the interview which was the apparent contradiction due to a misunderstanding on my part of the question. I perhaps understood the question to be so it was five years instead of so it's been five years. The remainder of the interview is accurate.

E-mail from the individual to Richard T. Tedrow, Hearing Officer, September 30, 2003.

After reviewing all of the record, it is my judgment that the individual never intended to mislead anyone about his alcohol and prescription difficulties. The record is extensive, spanning several decades, and covering -- for example -- the individual's enrollment in the SAPRO program in 1996 for substance abuse. There appear several detailed medical diagnoses and other material compiled for prior security clearance. At all times the individual has been completely candid and forthcoming about his substance abuse problems.

In fact, during the PSI the individual himself volunteered much of the information leading to this criterion (I) concern. The examiner asks is there "anything else you need to add or, before we, we let you go back to work?" *Tr.* at 47.

The individual then talks about the XXXXXXXXXXXXXXXX voluntary admission and the dental pain medication. It is clear to me from the record and the PSI transcription that many inadvertent exchanges occurred between the individual and the examiner and from those follow the criterion (l) charges. Consequently, I find that the criterion (l) charges have been mitigated.

Criteria (j) and (k)

The concerns as to alcohol and drug misuse are mitigated by the testimony of the DOE psychiatrist and the individual's psychotherapist. Each agrees that the individual is in full remission as to alcohol and drugs, and that he is rehabilitated. Great weight must be accorded this testimony.³ This testimony is recited or cited in the foregoing Background and Hearing sections. In addition, there is a great deal of testimony by the DOE-sponsored psychiatrist as to the situation the individual has placed himself in today, as compared to previous times when relapses occurred. Namely, he:

- ! has a psychotherapist who understands him
- ! has an AA sponsor who understands him
- ! has a safety plan
- ! is in full remission
- ! is not using drugs, and
- ! is not taking medication which in the past has made him worse.

Finally, in the words of the DOE psychiatrist, "it seems like [the individual] will continue with [the psychotherapist and sponsor]." *Tr.* at 78-79. Furthermore, the DOE psychiatrist seems to believe the individual will succeed: "If I were to take a chance on somebody, I probably would take a chance on him." *Tr.* at 79.

In this kind of proceeding, substantial weight is given to informed medical opinions and diagnoses. Obviously, great deference to such views is warranted when all of the medical professionals involved in a proceeding concur. That is the case here. Both the individual's psychotherapist and the DOE psychiatrist agree that for the individual, "the diagnosis of substance abuse (alcohol and prescription drugs) and dependence is in full remission." *Tr.* at 55. The individual's AA sponsor – who has an experienced and informed view -- also believes that the individual is in full remission and will succeed in avoiding relapse from substance dependence to abuse.

Given the weight and unanimity of the professional opinions voiced at the hearing, I conclude that the individual's substance abuse is in full remission and should not continue to be a barrier to a DOE personal security clearance under the (j) and (k) criteria.

³ See *Personnel Security Hearing*, Case No. VSO-0467, (January 31, 2002) (great weight accorded view of treating psychiatrist); *Personnel Security Hearing*, Case No. VSA-0154, 27 DOE¶ 83,008 (January 6, 1988) (great weight given to testimony of DOE psychiatrist); *Personnel Security Hearing*, Case No. VSA-0242 (August 25, 1999) (great weight given to the testimony of a counselor).

Conclusion

Based on the record in this proceeding, I find that the individual has resolved the security concerns presented under 10 CFR §§ 710.8(j), (k) and (l). For the reasons explained in this Decision, I find the individual has shown that granting him access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, it is my decision that the individual be granted access authorization. Review of this Decision by an Appeal Panel may be sought under the regulation set forth at 10 CFR § 710.28.

Richard T. Tedrow
Hearing Officer
Officer of Hearings and Appeals

Date: October 17, 2003