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December 3, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: July 3, 2003

Case Number: TSO-0062

This decision concerns the eligibility of XXXXXXXX XXX (hereinafter referred to as "the Individual") to maintain 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." The local Department of Energy Office (the DOE 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 in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, the Individual's access authorization should be restored.

**I. BACKGROUND**

The present case concerns an Individual with Alcohol Dependence. The Individual and all three of the expert witnesses who testified at her hearing agree that she is alcohol dependent. Each of the three expert witness agree that the Individual is now sufficiently reformed and rehabilitated to resolve the security concerns raised by her alcohol dependence (and consumption).

The events leading to this proceeding began when DOE officials received an anonymous letter expressing concern about the Individual's alcohol consumption. The Individual was then asked to report to her employer's medical office, which conducted a medical examination of the Individual. This medical examination revealed physical evidence which indicated the possibility that the Individual may have been consuming large quantities of alcohol. The Individual was then sent to an Employee Assistance Program Counselor (the EAP Counselor). The EAP Counselor advised the Individual to obtain an evaluation for substance abuse at a local hospital. The Individual was evaluated by the substance abuse professionals at the local hospital, who recommended immediate inpatient treatment. The next day, the Individual was hospitalized with symptoms of Alcohol Withdrawal Syndrome. The Individual was released from the local hospital after five days of inpatient treatment. Immediately after her release, she began a five week intensive outpatient program. In addition, the Individual began attending Alcoholics Anonymous meetings. On July 15, 2002, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On July 20, 2002, the DOE Psychiatrist issued a report

in which she stated that the Individual was Alcohol Dependent. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by her Alcohol Dependence. Specifically, the July 20, 2002 Report states in pertinent part

[The Individual] was forced into treatment in August 2001, less than a year ago. Even in her medical records, there was a note that her willingness to follow through with treatment was in accordance with her job requirements. 'She's willing to enter the intensive out patient program although this seemed to be principally to keep her job.' This is not unusual and not necessarily bad either. It is a common observation that people with substance dependence initially seek treatment with externally driven motivation such as threat of losing a job. Most people go through the motions of treatment but sustained sobriety usually is not successful unless they develop a sustained internal motivation for recovery or rehabilitation. Unfortunately, [the Individual] has not shown evidences of this stage in her recovery. Her participation in the recommended treatment had continuously weakened. In fact, in my opinion, there is a great likelihood that her non-adherence or lack of enthusiasm to treatment worsened after March when she thought that her clearance was already resolved. She stopped going to aftercare in April or May and she cancelled her last visit with [the EAP Counselor]. The most striking evidence of non-reformation is her continuing dishonesty and defensiveness that are characteristic features of substance dependence. If she had actually participated in aftercare and AA, she would have known what Step one of the 12-step program is. Her own admission of fabricating an answer to my question was unfortunate.

DOE Psychiatrist's Report of Examination at 12. The DOE Psychiatrist opined that in order to establish *rehabilitation* from her Alcohol Dependence, the Individual must either:

1. Produce documented evidence of attendance at Alcoholic's Anonymous for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year and be completely abstinent from alcohol and all other non-prescribed controlled substances for a minimum of one year following the completion of this program. This would equal two years of sobriety. [or]
2. Satisfactorily complete a minimum of 50 hours of a professionally led substance abuse treatment program, for a minimum of six months, including what is called 'aftercare' and be completely abstinent from alcohol and all non-prescribed controlled substances for [a] minimum of 1 ½ years following the completion of this program. This would equal two years of sobriety.

DOE Psychiatrist's Report of Examination at 12-13. The DOE Psychiatrist opined that in order to establish *reformation* from her Alcohol Dependence, the Individual must either:

1. [Attend] one of the two rehabilitation programs listed above. 2 years of absolute sobriety would be necessary to show adequate evidence of reformation. [or]
2. If the individual does not go through one of the two rehabilitation programs listed

above, 3 years of absolute sobriety would be necessary to show adequate evidence of reformation.

DOE Psychiatrist's Report of Examination at 13.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE Office then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning her eligibility for access authorization (the Notification Letter). The Notification Letter specifies two types of derogatory information described in 10 C.F.R. § 710.8(h) and (j). The Notification Letter alleges that the Individual has "an illness or mental condition of a nature which . . . causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). In addition, the Notification letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

The Individual filed a request for a hearing in which she made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented two witnesses: the DOE Psychiatrist, and a DOE Personnel Security Specialist. The Individual presented nine witnesses: a former DOE Consultant Psychiatrist who evaluated the Individual at her request (the Individual's Psychiatrist), seven friends and co-workers and the Individual's EAP Counselor, who treats her on a regular basis. The Individual also testified on her own behalf. *See* Transcript of Hearing, Case No. TSO-0062 (hereinafter cited as "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 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 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: 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.

### III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol dependence raises significant security concerns under Criteria J and H. In the present case, there is no dispute that the Individual is alcohol dependent. Tr. at 34, 54. Therefore, the local office properly invoked these criteria.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of her rehabilitation and reformation to resolve the security concerns raised by her alcohol dependence.

Three expert witnesses testified at the hearing and each expert witness agreed that the Individual has been sufficiently reformed and rehabilitated to resolve the security concerns raised by her alcohol dependence. It is important to note that, by the time of the hearing, the Individual had taken a number of important steps in order to address her alcohol dependence. Specifically, the record indicates that the Individual had successfully completed an intensive 5-week outpatient treatment program, had regularly attended that program's aftercare component and had become active in AA. The Individual has obtained an AA sponsor and has been working the 12-Steps Program. In addition, the Individual has been obtaining counseling from the EAP Counselor on at least a monthly basis. Most importantly, the record indicates that the Individual has abstained from using alcohol since August 22, 2001.

The DOE Psychiatrist testified that at the time that she had prepared her report, in July of 2002, she was convinced that while the Individual was abstaining from using alcohol, she had not recovered from her alcohol dependence. Tr. at 16, 28-29. The DOE Psychiatrist testified that, at that time, the Individual had not exhibited sufficient internal motivation and cognitive restructuring to convince the DOE Psychiatrist that the Individual had successfully recovered from her alcohol dependence. Tr. at 29, 34. The DOE Psychiatrist was also concerned that the Individual was slacking off in her commitment to aftercare and AA. Tr. at 33. At the hearing, the DOE Psychiatrist observed the testimony of the Individual and the other witnesses. After the testimony of the Individual and the other witnesses had concluded, the DOE Psychiatrist was called back to the stand. At this point the DOE Psychiatrist testified the Individual "satisfactorily meets the requirements for rehabilitation and reformation now . . ." Tr. at 206.

The Individual's Psychiatrist testified that she had evaluated the Individual on June 18, July 7, and August 18, 2003. Tr. at 49. The Individual's Psychiatrist further testified that the Individual's alcohol dependence "is now in complete remission" and that she is rehabilitated and reformed. Tr. at 50-51.

The EAP Counselor testified that he had been providing psychotherapy services to the Individual for well over two years. Tr. at 147. The EAP Counselor testified that, at his recommendation, the Individual had entered and completed an extensive outpatient treatment program and had become

actively involved in the AA program. Tr. at 150-51. The EAP Counselor further testified that he is convinced that the Individual has abstained from consuming alcohol since August 22, 2001. Tr. at 152. The EAP Counselor further testified that the Individual has “gone from that initial denial towards acceptance of the whole problem and, and/or to characterize it as a disease or – and/or dependence, and knowing that she, in fact, has to deal with this issue of alcoholism and to work through it to continue to work the program as she’s done.” Tr. at 152. The EAP Counselor testified that the Individual is in full remission and that there is adequate evidence that she is reformed and rehabilitated. Tr. at 155. The EAP Counselor further testified that the Individual’s prognosis is “very good.” Tr. at 159-60.

In summary, all three expert witnesses have testified that the Individual (1) is Alcohol Dependent, (2) is in full remission, and (3) has shown she is rehabilitated and reformed. Accordingly, she has successfully resolved the security concerns raised by her alcohol dependence.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J and H. Therefore, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should be restored at this time. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: December 3, 2003