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May 14, 2004

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 12, 2003

Case Number: TSO-0071

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office suspended the individual's clearance after determining that information in its possession created substantial doubt about the individual's continued eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should not be restored at this time.

Background

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The local DOE security office issued a Notification Letter to the individual on April 16, 2003. The Notification Letter alleges that DOE has substantial doubt about the individual's continued eligibility for a clearance, based upon disqualifying criteria set forth in section 710.8, paragraphs (h) and (j).

The Notification Letter alleges that the individual is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. This charge is based on an evaluation of the individual by a DOE consultant psychiatrist on September 13, 2002. It is the psychiatrist's opinion that the individual meets the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR), criteria for Substance Abuse, Alcohol. The psychiatrist concluded the individual has an illness or mental condition that causes or may cause a significant defect in her judgment or reliability, and that she has not shown adequate evidence of rehabilitation or reformation.

According to the Notification Letter, the individual has been involved in four alcohol-related offenses during the past 20 years: (1) in October 1982, she had an accident while driving under the influence of alcohol and a passenger in her car was killed; (2) on July 23, 1983, she was arrested for Disorderly Conduct and Possession of Alcohol under the age of 21; (3) on December 5, 1997, she was arrested for DWI; and (4) on November 3, 2001, the individual was again arrested for DWI. These are the bases for the security concerns based on Section 710.8(h) and (j).

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local DOE security office transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as Hearing Officer in this case. At the hearing I convened, the DOE Counsel called four witnesses: the individual, the individual's manager, a personnel security specialist (who testified by telephone), and the DOE psychiatrist. The individual, who represented herself, testified on her own behalf, and called three other witnesses, who are all employed at the same DOE facility, and who are personal friends of the individual. The DOE submitted 14 written exhibits. The individual submitted a written answer to the charges in the Notification Letter, and one written exhibit.

Standard of Review

The 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. These factors are set out in section 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 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.

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, 24 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 still has not resolved the concerns in the Notification Letter, and therefore her access authorization should not be restored at this time.

Findings of Fact

Except as noted, the individual does not dispute the facts alleged in the Notification Letter. The individual admits her involvement in four separate alcohol-related offenses over the past 20 years, beginning with the 1982 accident that resulted in the death of a passenger riding in the car driven by the individual, and DWI arrests in 1997 and 2001. She questions the fairness of her arrest in 1983 for Disorderly Conduct and Possession of Alcohol under the age of 21, claiming that she was not in possession of any alcohol at the time, and attributing that incident to the action of an overzealous police officer. However, the individual does not disagree with the DOE psychiatrist’s conclusion that she suffers from Alcohol Abuse.

The DOE psychiatrist issued his report on the individual in October 2002. DOE Exhibit 3. Noting the individual’s 20-year history of alcohol-related problems, and the fact that she was still drinking at the time of their interview in September 2002, he diagnosed her as suffering from Alcohol Abuse, without adequate evidence of rehabilitation or reformation. According to the psychiatrist’s report, to show adequate evidence of rehabilitation the individual can do one of the following:

- (1) Produce documented evidence of attendance at Alcoholics Anonymous (AA) meetings for a minimum of 100 hours with a sponsor, at least once a week, for a minimum of 1 year and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1 year following the completion of this program = 2 years of sobriety.
- (2) Satisfactorily complete a minimum of 50 hours of a professionally led, substance abuse treatment program, for a minimum of 6 months, including what is called “aftercare” and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1½ years following the completion of this program = 2 years of sobriety.

DOE Exhibit 3 at 21. According to the psychiatrist’s report, as adequate evidence of reformation there are two alternatives:

- (1) If the subject goes through one of the two rehabilitation programs listed above, then 2 years of absolute sobriety would be necessary to show adequate evidence of reformation.

(2) If the subject does not go through one of the two rehabilitation programs listed above, then 3 years of absolute sobriety would be necessary to show adequate evidence of reformation.

Id.

According to the individual's written response to the Notification Letter, which she addressed to the local DOE security office in May 2003,

I met with [the psychiatrist] on September 13, 2002 for a psychiatric evaluation. During our session I asked what I needed to do to keep my clearance and specifically asked if he recommended any type of treatment for me. He told me that treatment in my case was not necessary because he classified me as a problem drinker and not an alcoholic. His recommendation to me was that I quit drinking totally. I have taken his advice and have not had any alcohol since that day.

Response at 1. During the hearing in March 2004, the individual explained how she has relied on self-help resources, including religion, readings, tapes, her mother, and a support group of close friends, to maintain a sober life style. However, the individual has not attended any AA meetings, or followed any other formal rehabilitation program, as recommended by the DOE psychiatrist's report.

This "information gap" raises a disturbing issue: the DOE psychiatrist's report was issued in October 2002, but it was not given to the individual until the end of January 2004, almost 16 months later. If the report had been given to the individual sooner, she could have joined AA, and she might even have completed the recommended year of treatment by the time of the hearing. At this stage of the case, the individual was clearly disadvantaged by DOE security's long delay in giving her the psychiatrist's report. As discussed below, at the hearing the DOE psychiatrist considered whether he could moderate his prescription for rehabilitation for this individual, in view of that delay, but ultimately concluded that he could not.

Testimony of the Witnesses at the Hearing

The Individual

As noted above, the individual challenges the facts alleged in the Notification Letter about the circumstances of her 1983 arrest for Disorderly Conduct and Possession of Alcohol under the age of 21. She admits drinking one beer four hours before the arrest, admits she was arrested on those charges, but maintains she was not aware there was beer in the car in which she was riding when arrested, and that "[i]t was a case of being at the wrong place at the wrong time." Hearing Transcript ("Tr.") at 11. The individual points out that the arrest was "a mistake, and it was thrown out of court." *Id.*

The individual testified that aside from half a glass of champagne she drank as a toast at a friend's wedding in August 2002, she has not drunk any alcohol since April 2002. She

indicated she has not been going to AA because at the end of her interview with the DOE psychiatrist in September 2002, she understood “that formal treatment in my case would not be necessary.” According to the individual, she was not aware of the contents of the psychiatrist’s report, “and had no idea that I was expected to go to AA.” *Id.* at 14. But aside from that, the individual believes

The interview with [the DOE psychiatrist] was the turning point for me in realizing that I indeed did have a problem. I could not admit it to myself, much less to anyone else. And after my meeting with [the DOE psychiatrist] I went home, and basically I cried for days. And I realized that I really did need to make some radical changes in my life. And actually, to date, I am grateful for that interview, because it forced me to realize a lot of things that I was running away from.

Id.

Although she has not had any formal treatment, the individual described what she has done on her own. She has a group of close friends who meet on a regular basis “to provide support and therapy for each other. We talk about issues and we are there for each other...I’ve been able to share and to talk about and to let go of a lot of negative emotions and the bitterness and anger that I’ve had over the years.” *Id.* at 15-16. The individual has also relied on her religion for support, and on her mother, whom she now sees on a daily basis. After the 2001 DWI arrest, the individual moved from an area where alcohol abuse was more prevalent to a different city where she believes her social and cultural milieu is more conducive to a sober lifestyle. In addition to her support group, she has also utilized many self-help resources, including motivational, inspirational, and psychological self-help books, tapes, and web sites. *See* Attachment to E-Mail Message from the Individual dated March 2, 2004, “Self-Help Resources.” One of the books the individual consulted was the AA “Blue Book,” which she described in her hearing testimony as having “opened up my eyes to see just how bad it can be, and just how bad people can get, and just how destructive alcohol can be.” *Tr.* at 20-21. The individual testified that she does not intend to drink in the future, as she is “deathly afraid of alcohol,” nor does she feel any desire to drink alcohol again, even in social situations where others are drinking. *Id.*

According to the individual, she would have “tried to follow and tried to fulfill everything that was stated on [the DOE psychiatrist’s] report,” had she received it earlier. *Id.* at 22. She described the report as “very disturbing” because it made her realize once again that “I indeed had a problem.” Even though she did not go to AA, the individual maintained that by stopping her alcohol consumption, living a sober life, and using her own self-help resources, what she did was “the next best thing that I could think of, because I did not know that I was required to attend any of these programs.” *Id.* at 23-24.

The Individual's Support Group

Each of the three women in the individual's support group testified on her behalf. They all work at the same DOE facility and hold security clearances. None of them works directly with the individual, and they are personal friends rather than professional colleagues.

The first witness described how their group meets occasionally, how they discuss personal issues, and support one another. *Id.* at 28. She stated that the individual recently moved and now lives nearby so they see each other often, socializing, going to church, and playing tennis together. The individual told this friend about her alcohol problems, but the witness never saw the individual overindulge. This friend testified that she had not seen the individual consume any alcohol in a "long while," "definitely months," but she could not say how long it had been. *Id.* at 30. Since the individual's 2001 DWI arrest, this friend has noticed steady improvement in her disposition and attitude, which she now finds very positive. The witness believes the individual has learned from her mistakes. *Id.* at 32-35.

The second witness from the support group knew about the individual's 2001 DWI arrest. She described the individual's interview with the DOE psychiatrist as "a turning point" that made the individual realize she needed to make some changes, recalling that the individual was very upset at the time, but "determined to make amends." *Id.* at 46. She said it had been "a couple of years" since she had seen the individual consume alcohol. *Id.* at 40. This witness characterized the individual's current attitude and demeanor as "healthy," and said the individual had discussed "the experiences in her life that have caused her to indulge." *Id.* at 43. The second friend believes the individual can now handle everyday stress and any problems that arise without drinking. *Id.* at 44.

The third member of the individual's support group has known her since childhood. According to this witness, the 2001 DWI arrest was a watershed event in the individual's life:

I was aware of... her DUI. She had a hard time with that. And in my opinion, I think that had to happen for her to change her life around. And I think she's really learned a lesson from that. I was very concerned about her when she got the DUI. But I think that it's really kind of a blessing, because she's different now, and I'm really proud of her.

Id. at 50. She added that the since individual has reformed, moved to a different city, and no longer associates with the type of friends she kept in the past, the bad influences "aren't there any more." *Id.* at 51. This witness has not seen the individual drinking since the 2001 DWI arrest. She does not believe the individual is a secret drinker, and she does not believe the individual will ever drink again, even in a crisis, "because she's afraid to drink." *Id.* at 52-55.

The Individual's Manager

The manager outlined the mission and functions of the individual's organization at the DOE facility. He explained what her duties and responsibilities are, and what additional kinds of work she could be assigned, assuming she had a clearance. *Id.* at 57-63. Ninety percent of the work the individual could be assigned is unclassified and does not require a clearance. The manager indicated that the individual would be assigned to temporary duty stations in foreign countries. *Id.* at 61. According to the manager, the individual is a highly regarded employee. Neither the manager nor any of the individual's co-workers, who, according to the manager, "can be really cranky when employees don't show up," has ever noticed any alcohol-related problems with the individual's performance or attendance. *Id.* at 67.

The Personnel Security Specialist

The DOE counsel called a personnel security specialist, who testified for less than a minute about the facts in the record concerning the individual's 1983 arrest for Disorderly Conduct and Possession of Alcohol under the age of 21. As noted above, the individual questions the basis for that arrest, and attributes it to a mistake. According to this witness, during a Personnel Security Interview DOE conducted in 1984, the individual admitted she "had a beer" on the day of that arrest.

The DOE Psychiatrist

The DOE psychiatrist testified last at the hearing, after observing all of the other witnesses. Referring to his October 2002 report, the psychiatrist reiterated his finding that the individual was suffering from alcohol abuse, without adequate evidence of rehabilitation or reformation. *Id.* at 74; DOE Exhibit 3. He also opined that the individual has an illness or mental condition which causes or may cause a significant defect in her judgment or reliability, until such time as she is showing adequate evidence of rehabilitation or reformation. *Tr.* at 77. The psychiatrist believes this is "a close case," because he is impressed with the positive steps the individual has taken since their interview, 18 months before the hearing. However, the psychiatrist's opinion is still the same as when he wrote the report, in terms of his recommendations for what the individual needed to demonstrate rehabilitation or reformation. *Id.* at 79.

The DOE counsel, the individual, and I each asked the psychiatrist to think hard whether he could change his recommendation, in view of the disadvantage to the individual from the 16 month delay in getting a copy of the report. The psychiatrist's report recommended that if the individual did not go through rehabilitation, she would need 36 months of complete sobriety. DOE Exhibit 3 at 21. The psychiatrist considered that 20 months of sobriety, which the individual had at the time of the hearing, was "just a little bit more than half," and that was not "close enough" to change his opinion. *Id.* at 80-81.

When asked what the individual could have done differently, in order to persuade him that she is rehabilitated, the psychiatrist mentioned two things: (1) the individual could

have presented expert testimony that she no longer suffered from alcohol abuse, or (2) she could have started going to AA meetings immediately after receiving the report six weeks before the hearing. *Id.* at 80-81. He reiterated his belief that attending AA with a sponsor is the best way for this individual to achieve rehabilitation. In view of the individual's 20 months of sobriety at the time of the hearing, however, the DOE psychiatrist updated his recommendation. He now believes that the individual should remain sober, and attend AA meetings with a sponsor for one year, to show rehabilitation. Since the individual will be assigned to temporary duty in foreign countries where English language AA meetings may not be available, the psychiatrist stated that the individual could still meet his recommendation as long as she attends 100 hours of AA over the course of one year. *Id.* at 87.

Analysis

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. *See Personnel Security Hearing*, (Case No. TSO-0010), DOE ¶ 82,924 (2003), <http://www.oha.doe.gov/cases/security/tso0010.pdf>, and cases cited therein. Based on the uncontested facts in the record concerning the individual's history of alcohol-related legal problems, and the DOE psychiatrist's opinion in his October 2002 evaluation that the individual suffers from alcohol abuse, without adequate evidence of rehabilitation or reformation, I find the local DOE security office properly invoked the criteria set forth in section 710.8, paragraphs (h) and (j).

I next consider whether the individual has mitigated the concerns about her excessive alcohol use. While the evidence in the record clearly shows this individual has made substantial progress toward rehabilitation since she stopped drinking 20 months before the hearing, I agree with the DOE psychiatrist she has not yet achieved that goal. This individual does have a 20-year history of periodic, serious alcohol-related arrests, and I accept the DOE psychiatrist's expert opinion that in addition to maintaining her sobriety, she still needs a year of formal treatment such as participating in AA with a sponsor, to achieve rehabilitation. Or, in the alternative, the individual still needs another year of abstinence to achieve a total of three years sobriety in order to show reformation.

The DOE psychiatrist was sympathetic to the individual because of DOE's lengthy delay in giving her a copy of his report, but he still recommends that she participate in AA with a sponsor because in his opinion it would be the most effective way for her to learn more about her alcohol issues, and thereby lessen the probability that she relapses. He pointed out that the friends in her support group may be useful, but they do not have alcohol problems. The psychiatrist believes "there is a big value in being in an environment with other people that have had alcohol-abuse issues, and alcohol problems." *Tr.* at 80. According to the psychiatrist, "AA is successful because of the fact that because of denial and minimization, people don't see it in themselves, but they can see it in somebody else." *Id.* The individual asked the psychiatrist if six months of AA would not suffice in her case. He explained "one year is twice as good as six months because it's twice as long," adding that "the data on AA is that long-term, voluntary association with AA has

the best correlation with long-term sobriety.” *Id.* at 84-85. Ultimately, the issue before me is not to determine whether the individual was harmed by the delay in getting the psychiatrist’s report, but to assess the status of her recovery. The DOE psychiatrist’s testimony is persuasive on this point.

Conclusion

Based on the record in this proceeding, I find that the individual has not yet resolved the security concerns under 10 CFR § 710.8(h) and (j) that were specified in the Notification Letter. For the reasons explained in this Decision, I find the individual has failed to show that restoring her access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual’s access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 CFR § 710.28.

Thomas O. Mann
Hearing Officer
Office of Hearings and Appeals

Date: May 14, 2004