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May 24, 2005

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 23, 2004

Case Number: TSO-0122

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (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."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires her to maintain a DOE security clearance. She is also included in the DOE's Human Reliability Program, formerly the Personnel Assurance Program (PAP) at her place of employment.²

In February 2002, the DOE removed the individual from the PAP based on (1) evidence that the individual was suffering from situational depression, and (2) suicidal comments made by the individual at her workplace. In March 2002, the LSO conducted a Personnel Security Interview (PSI) with the individual to discuss the matters that led to the individual's removal from the PAP. In April 2002, the individual voluntarily entered an inpatient treatment facility where she was diagnosed as suffering from Major Depression

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.

² The PAP was a human reliability program designed to ensure that individuals assigned to nuclear explosive duties at DOE facilities did not have any incapacity that could result in a threat to nuclear explosive safety. See 10 C.F.R. Part 711 (repealed), 69 Fed. Reg. 3213 (January 23, 2004). The PAP was replaced effective April 22, 2004 with the DOE's Human Reliability Program codified in 10 C.F.R. Part 712.

and Alcohol Dependence. Upon her discharge, the LSO interviewed the individual again and requested permission to review all the individual's medical and psychological records. Unable to resolve its concerns about the individual's mental health and alcohol consumption, the LSO decided in 2003 to refer the individual for a psychiatric evaluation. At the request of the DOE, a board-certified psychiatrist (DOE consultant-psychiatrist) examined the individual in June 2003 for almost four hours. After the interview, the DOE consultant-psychiatrist memorialized her findings in a Report which will be referred to in this Decision as either "the Psychiatric Report" or Exhibit (Ex.) 11. In the Psychiatric Report, the DOE consultant-psychiatrist provided three diagnoses for the individual:

- Major Depressive Disorder, single episode, in remission
- Dysthymic Disorder, early onset, in remission
- Alcohol Dependence, in early full remission

The DOE consultant-psychiatrist also opined in the Report that even though the individual was in remission from her alcohol dependence and depression at the time of the psychiatric examination, the individual had only addressed her depression in treatment, not her alcohol dependence. The DOE consultant-psychiatrist explained that both of these illnesses may cause a significant defect in the individual's judgment and reliability if they are untreated or during periods of "acute exacerbation." Ex. 11.

In May 2004, the LSO issued a Notification Letter to the individual in which it stated that the DOE has substantial doubt about the individual's continued eligibility to hold a DOE security clearance, based upon disqualifying criteria set forth in the security regulations codified at 10 C.F.R. § 710.8, subsections (h) and (j). (Criteria H and J respectively).³ Upon her receipt of the Notification Letter, the individual, through her attorney, exercised her rights under the Part 710 regulations and requested an administrative review hearing. On June 25, 2004, the Director of the Office of Hearings and Appeals appointed me the Hearing Officer in this case. After the Director approved an extension of time to accommodate the parties' schedules, I conducted a hearing in this matter. 10 C.F.R. § 710.25(g). At the hearing, nine witnesses testified, one on behalf of the DOE and eight on behalf of the individual. In addition to the testimonial evidence, the DOE tendered 29 exhibits into the record, and the individual submitted 20 exhibits. After I received some post-hearing submissions in this case, I closed the record.

³ Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting 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).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the DOE cites two potentially disqualifying criteria as bases for suspending the individual's clearance, *i.e.*, Criteria H and J. The security concerns associated with these two criteria are explained in the Adjudicative Guidelines for Determining Eligibility for Access to Classified Matter and can be found in Appendix B to Subpart A of 10 C.F.R. Part 710. In brief, mental illnesses such as the ones at issue here are security concerns because they may indicate a defect in judgment, reliability, or stability. *See* 10 C.F.R. Part 710, Appendix B to Subpart A, Guideline I. In addition, excessive consumption of alcohol itself is a security concern because the behavior often leads to the exercise of questionable judgment, unreliability, and a failure to control impulses and increases the risk of unauthorized disclosure of classified information due to carelessness. *Id.*, Guideline G.

With regard to Criterion H, the Notification Letter alleges that the individual suffers from two mental illnesses, Major Depressive Disorder and Alcohol Dependence, both which may cause a significant defect in the individual's judgment or reliability under certain circumstances. This charge is based on the findings contained in the Psychiatric Report.

As for Criterion J, the DOE relies again on the diagnosis of the DOE consultant-psychiatrist that the individual suffers from Alcohol Dependence. In addition, the DOE cites in the Notification Letter an admission made by the individual during a 1991 Personnel Security Interview (1991 PSI) that she had been arrested and charged with Public Intoxication in the summer of 1991.

IV. Findings of Fact

By her own report, the individual has battled depression since her childhood. *See* Ex. 12 at 12. The individual's excessive alcohol consumption began upon graduation from high school. Ex. 24 at 47. At the age of 18 or 19, the police arrested the individual and charged her with Public Intoxication. Ex. 26 at 36-40. Details relating to the individual's alcohol use between 1991 and 1997 are not clear from the record. In 1997, however, the individual claims that she did not consume any alcohol because she was pregnant at the time. Tr. at 49.

Between 1999 and 2002, the individual sporadically saw a counselor for her depression, took prescribed antidepressants, and periodically drank to excess. *Id.* It appears from the record that the individual's mental health declined and her drinking increased in 1999 when her first husband left her. Ex. 25 at 17. According to the individual, after her marital breakup she consumed four beers in a period of four hours every other day on weekdays, and seven beers each weekend night. Ex. 11 at 10. The individual also reports that the stressors associated with this marital breakup led her to seek counseling. *Id.* She reports that she took Prozac for approximately one and one-half months in 1999 but stopped taking the medication on her own due to its cost. Ex. 26 at 8-13. A few years later, in January 2001, another doctor prescribed Zoloft for the individual purportedly for weight control. Ex. 25 at 18. The individual stopped taking the Zoloft on her own as well. *Id.* at 19.

In May 2001, the individual claims that she stopped drinking when she began dating. After six months, however, the individual's boyfriend terminated their relationship. *Id.* at 22. This breakup had a profound effect on the individual. Beginning in November 2001, the individual started consuming six beers each day. Ex. 11 at 10. Eventually, the individual sought the help of her family physician to address the sadness and difficulty that she was experiencing. *Id.* at 22-23. The individual's family physician prescribed an antidepressant for the individual and referred her to a counselor (Counselor #1). *Id.* According to the individual, during this time period she felt guilty every morning after consuming alcohol but was unable to stop herself from drinking. *Id.* at 11.

Sometime in January 2002, the individual's supervisor overheard the individual make comments about suicide. Ex. 20. The supervisor immediately contacted the Occupational Medicine Department (OMD) at the site where the individual worked. *Id.* Medical

personnel from the OMD met with the individual to discuss the issues that had been raised about her suitability to remain in the PAP. *Id.* The Director of the OMD elected to remove the individual from the PAP after determining that the individual was not able to perform her job duties in a safe and reliable manner. *Id.*

In February 2002, the individual began weekly counseling sessions with Counselor #1. Ex. 13. Sometime thereafter, Counselor #1 referred the individual to a psychiatrist (Personal Psychiatrist). Before she could meet with the Personal Psychiatrist, the individual voluntarily entered an inpatient treatment center in April 2002. Ex. 14. According to the medical records from the inpatient treatment program, a medical doctor (Treatment Program Doctor) at that facility diagnosed the individual as suffering from two mental illnesses, Alcohol Dependence⁴ and Major Depression, single episode. Ex. 12. The Treatment Center Doctor recommended that the individual, upon discharge, should (1) seek further treatment for her chemical dependency in an Intensive Outpatient Program, (2) continue her individual therapy with Counselor #1, and (3) begin seeing her Personal Psychiatrist. *Id.*

After her discharge from the inpatient treatment center, the individual did not enter a treatment center for chemical dependency, as the Treatment Center Doctor had suggested. Rather, she moderated her alcohol use, began attending Alcoholics Anonymous (AA) and continued seeing Counselor #1. Ex. 13.

According to therapy notes, Counselor #1 expressed concern as early as May 2002 that the individual was minimizing the need to attend AA. Ex. 13. By June 2002, Counselor #1 documented that the individual was drinking six to nine drinks each night while playing games on the internet. *Id.* In July 2002, the Counselor reported that the individual was having trouble stopping drinking and was consuming alcohol more days than not. *Id.* One month later, in August 2002, the individual voluntarily withdrew from counseling after canceling four of her last seven therapy sessions. *Id.*

In August 2002, the OMD convened a Potentially Disqualifying Information (PDI) meeting to review issues relating to the individual's removal from the PAP. Ex. 19. The notes of that PDI indicate that the individual's situational depression was resolved. There is no mention of the alcohol issues, however. *Id.* The notes also reflect that the medical and psychological staff found no objection to the individual's return to the PAP. *Id.*⁵ The OMD doctors and psychologists did recommend, however, that the individual "continue to see [a] counselor and psychiatrist on a regular basis until dismissed." *Id.*

Ten months later in June 2003, the DOE consultant-psychiatrist examined the individual and opined that she was suffering from "a dual disorder, alcohol dependence co-occurring with depression." Ex. 11 at 20. Between June 2003 and May 2004, the record

⁴ The individual admitted that she was drinking a six pack of beer each day before her admission to the inpatient treatment center in April 2002. Ex. 24 at 23; Ex. 12 at 3.

⁵ Testimony at the hearing revealed that the psychologists and medical doctors associated with the OMD did not have access to the individual's records from Counselor #1, the discharge summary from the Inpatient Treatment Program, or information from the individual's Personal Psychiatrist when they assessed whether the individual should return to the PAP.

indicates that the individual visited her Personal Psychiatrist every three months to have her medications monitored. Tr. at 213. According to the record, the individual never returned for therapy with Counselor # 1. The record also indicates that the individual stopped attending AA sometime after August 2002.

In May 2004, the individual consulted with a psychologist (Psychologist) at the recommendation of her attorney in this administrative review proceeding. Transcript of Hearing (Tr.) at 96. The Psychologist has provided counseling to the individual regarding her depression since June 2004. Ex. L. After three or four counseling sessions, the Psychologist referred the individual to an addiction specialist (Addiction Counselor) for a chemical dependency assessment. Tr. at 81. The Addiction Counselor decided that the individual did not meet the criteria for Alcohol Dependence or Abuse but recommended that the individual complete six to eight hours of alcohol education. Ex. O.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. 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).⁶ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find 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 decision are discussed below.

A. Depression and Dysthymia under Criterion H

The testimonial and documentary evidence presented in this case by both the individual and the DOE demonstrate that the security concerns associated with the individual's depression and dysthymia⁷ have been mitigated. The bases for this finding are set forth below.

First, the individual's Psychologist testified that he has provided psychotherapy to the individual to address the individual's depressive symptoms since May 2004. Tr. at 77. The Psychologist opined at the hearing that the individual's "depression is in remission because she has taken her medication and continued to come to therapy." *Id.* at 96. The Psychologist explained that he spends 45 to 60 minutes every week or every other week

⁶ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

⁷ Dysthymic Disorder is defined in the Diagnostic and Statistical Manual for Mental Disorders, 4th edition, Text Revised (DSM-IV-TR) as "depressed mood for most of the day, for more days than not, as indicated either by subjective account or observation by others, for at least two years." *See* Ex. 11 at 12.

with the individual addressing issues that have presented problems in her life and helping her learn to cope with specific situations. *Id.* at 97, 123. Second, the DOE consultant-psychiatrist opined that the individual's depression has been resolved and adequately treated and therefore no longer an issue from a psychiatric viewpoint. Ex. 29 (post-hearing submission). Third, a psychologist from the OMD who evaluated the individual for reinstatement of her PAP (PAP Psychologist) testified on the individual's behalf at the hearing. The PAP psychologist stated that he last saw the individual in October 2003 at which time he thought her depression was resolved and that she was doing well enough to be reinstated into the PAP. Tr. at 25. Finally, the individual's Personal Psychiatrist provided a letter after the hearing in response to my request for additional information in this case. The Personal Psychiatrist confirmed first that he began treating the individual for depressive symptoms in April 2002. Ex. T. The Personal Psychiatrist then related that he has prescribed a variety of antidepressants for the individual that have resulted in the remission of her depressive symptoms. *Id.* The Personal Psychiatrist concluded that as long as the individual continues to take her medications, she will remain in remission from her depression and dysthymia. *Id.*

In evaluating the evidence presented, I considered that before the individual had received regular psychotherapy and conscientiously took her antidepressants, she slipped into depression when a crisis occurred in her life. Since receiving psychotherapy, however, the record reflects that the individual's self esteem appears to have improved and she is better able to handle stressful situations. Two stressful events occurred in the individual's life in 2004 that did not precipitate depressive symptoms in the individual. In April and May 2004, the individual became embroiled in two domestic dispute incidents with her second husband. *See* Ex. 27 and 28. Both incidents resulted in police involvement. *Id.* The individual provided compelling testimony that she is now able to handle the stressors that accompany the altercations with her new husband. She explained that she removes herself and her daughter from an explosive situation and calmly reflects on what she should do next. Tr. at 192. She contrasted this approach with that approach that she used before she underwent treatment for her depression. Before psychotherapy, related the individual, she would avoid her problems "by crawling into a corner and crying." *Id.* at 196.

The individual's mother confirmed that her daughter's psychotherapy has had a positive impact on her daughter's life and has made her daughter a stronger person. *Id.* at 144, 146. According to the individual's mother, after the last domestic dispute between the individual and the individual's spouse, the individual and her daughter moved into a hotel where her daughter reflected upon whether she should terminate her marriage or attempt to reconcile with her spouse. *Id.* at 155. Ultimately, the individual and her husband decided to attend one anger management class together. *Id.* at 52.

The individual's Psychologist also commented on the individual's handling of the domestic situation that occurred in May 2004. *Id.* at 92-93. He testified that the individual is now more assertive, is able to stand up for herself, and has improved her self esteem. *Id.* The Psychologist opined that the manner in which the individual coped with the last domestic situation demonstrates that she has internalized her psychotherapy.

In the end, the expert opinions of four mental health professionals, combined with the convincing testimony of the individual and her mother, convince me that the individual's depression and dysthymia are adequately controlled by medication and psychotherapy and that there is a low probability of recurrence or exacerbation of those mental illnesses.

B. Alcohol Issues under Criterion H and J

At the hearing, the individual contested the DOE consultant-psychiatrist's finding that she suffers from alcohol dependence. She presented testimonial evidence from the PAP Psychologist and her personal Psychologist that she is suffering from alcohol abuse. Tr. at 29, 112. In addition, she presented conflicting documentary evidence from the Addiction Counselor regarding the diagnosis of alcohol abuse. Ex. O, P. The individual did not, however, present Counselor # 1 or her Personal Psychiatrist as witnesses.

The DOE consultant-psychiatrist listened to the testimony of the PAP Psychologist and the individual's Psychologist before she testified. Despite the opinions to the contrary, the DOE consultant-psychiatrist remained firm in her opinion that the individual suffered from alcohol dependence. *Id.* at 236-59. After the hearing, the DOE consultant-psychiatrist examined a post-hearing letter tendered by the individual's Personal Psychiatrist in the case. The DOE consultant-psychiatrist did not waver in her opinion that the individual suffers from alcohol dependence even after reviewing that letter. Ex. 29. Since a predictive assessment of a person's recovery and prognosis may vary depending on whether a person is diagnosed as suffering from alcohol abuse or alcohol dependence, I must first decide which diagnosis is supported by the evidence in this case.

1. The DOE Consultant-Psychiatrist' Opinion regarding the Alcohol Disorder at Issue

In the Psychiatric Report, the DOE consultant-psychiatrist explains in detail that the individual meets at least four criteria in the DSM-IV-TR under the category Substance Dependence. Ex. 11 at 15-17. The DSM-IV-TR requires only three criteria to be met for the diagnosis of Substance Dependence to attach. Specifically, the DOE consultant-psychiatrist opined that the individual meets Criterion (3) (the substance is often taken in larger amounts or a longer period than was intended), Criterion (4) (there is a persistent desire or unsuccessful efforts to cut down or control substance use, Criterion (5) (a great deal of time is spent in activities necessary to use the substance), and Criterion (6) (important social, occupational, or recreational activities are given up or reduced because of substance use). *Id.*

At the hearing, the DOE consultant-psychiatrist emphasized that the individual's depression and alcohol dependence co-existed; neither one depended on the other. This distinction is important because some other experts in this case disagree with the DOE consultant-psychiatrist's determination in this regard. *Id.* at 236-37.

2. The Psychologist's Opinion regarding the Alcohol Disorder at Issue

The individual's Psychologist testified that 25 to 30% of his patients have alcohol and drug problems; the remainder of his patients suffer from emotional issues. *Id.* at 76. The

Psychologist did not treat the individual for her alcohol problems but rather he referred her to an Addiction Counselor for an alcohol assessment. *Id.* at 81. Notwithstanding this fact, the Psychologist opined at the hearing that the individual self-medicated her depression with alcohol and never suffered from alcohol dependence. *Id.* at 80, 112. When asked by the DOE Counsel about the specific criteria for Alcohol Dependence under the DSM-IV-TR, the Psychologist's responses were evasive. For example, when asked specifically about Criterion (3) under the DSM-IV-TR category Substance Dependence, a criterion that the DOE consultant-psychiatrist opined that the individual met, the Psychologist simply stated, "I don't have an opinion on that." *Id.* at 110. Regarding Criterion (4) under the DSM-IV-TR category Substance Dependence, the Psychologist did not address the criterion. *Id.* Instead, he reiterated his position that the individual "was being under-treated for depression, and as a result, I think, used alcohol, but I don't think became dependent on alcohol." *Id.* The DOE Counselor then reminded the Psychologist that he had previously testified that he used the DSM-IV in his practice and requested a specific explanation of why the individual did not meet the DSM-IV-TR Criterion (4) for Substance Dependence. *Id.* at 112. The Psychologist did not answer the question directly except to say that the individual did not meet Criterion (4) as of the date of the hearing. *Id.* The Psychologist insisted that it was the depression that masked the individual's alcohol but admitted that dual diagnoses can co-exist for purposes of the DSM-IV. *Id.* at 118.

3. The PAP Psychologist's Opinion with regard to the Individual's Alcohol Use

The PAP Psychologist testified at the hearing that the individual was self-medicating her depression with alcohol. *Id.* at 23. He stated that during his meetings with the individual relating to the PAP, he "did not see alcohol dependence, only alcohol abuse." *Id.* at 29. The PAP Psychologist related that he and others in the PAP decision making process decided in August 2002 that the individual had resolved her alcohol issues. *Id.* at 27. The PAP Psychologist admitted at the hearing that he did not have access to Counselor # 1's notes that documented the individual's increasing use of alcohol in July and August 2002. He also admitted that he did not have access to the inpatient treatment center records from April 2002 that showed the diagnosis of Alcohol Dependence. *Id.* at 32. The PAP Psychologist testified that he relied on the individual's self-reporting in deciding to propose her reinstatement into the PAP. *Id.* He added that he and the other committee members assumed that the individual was being honest with them. *Id.* The PAP Psychologist added that he would have looked at the individual's situation differently had he known that she had resumed drinking after her release in April 2002 from the inpatient treatment program. *Id.* Finally, he testified that he would have recommended to the individual that she attend an intensive outpatient alcohol treatment program had he known the truth about her drinking habits after April 2002. *Id.* at 34.

4. The Addiction Counselor's View regarding the Individual's Alcohol Use

The individual met with the Addiction Counselor in June 2004 at the recommendation of her Psychologist. The Addiction Counselor's records reflect that he administered a test, the Substance Abuse Subtle Screening Inventory (SASSI), to the individual and conducted an interview with her. Ex. O. In a letter dated June 9, 2004, the Addiction Counselor opined that "the individual does not meet criteria for Alcohol Dependence or

Abuse at this time.” *Id.* He then added that he believed the individual is using alcohol to self-medicate and recommends six to eight hours of alcohol education. *Id.* In an undated form labeled, “Chemical Dependency Assessment,” presumably completed by the Addiction Counselor, the box “Abuse” is check under the category “Evaluation’s Impression of Substance Use.” Ex. N-2 at 2.

On July 27, 2004, the Addiction Counselor wrote a letter to the individual’s Psychologist in which he states that the “patient meets criteria for Alcohol Abuse and Major Depressive Disorder.” Ex. P. The Addiction Counselor indicates the course of treatment for the Alcohol Abuse as follows: Provided patient with 5 sessions that include disease concept, process of recovery, and relapse prevention.” *Id.*

Since the Addiction Counselor did not testify at the hearing, it is not clear why there is a discrepancy in his letters with regard to the individual’s alcohol disorder diagnosis.

5. The Personal Psychiatrist’s Documentation

The documentation provided by the individual’s Personal Psychiatrist provides little insight into his opinions with regard to the individual’s alcohol use. In his initial interview with the individual on April 12, 2002, the Personal Psychiatrist notes in his report that the individual told him that she was consuming a six-pack a day since September 2001. Ex. H at 2. The only diagnosis provided by the Personal Psychiatrist in April 2002 is Major Depressive Disorder, Recurrent. The Personal Psychiatrist’s Progress Notes for the period April 2002 until November 2003 also contain no information relating to the individual’s alcohol use. Ex. G. Similarly, the Personal Psychiatrist fails to address the individual’s alcohol in a post-hearing submission tendered in January 2005 in this case. *See* Ex. T.

In the Psychiatric Report, the DOE consultant-psychiatrist states that she contacted the individual’s Personal Psychiatrist in June 2003 to inquire about his views with regard to the individual’s alcohol use or lack thereof. Ex. 11. The DOE consultant-psychiatrist states in the Psychiatric Report that the Personal Psychiatrist told her that he did not take a full history of the individual’s alcohol use. *Id.* The Personal Psychiatrist also purportedly told the DOE consultant-psychiatrist that he thought the individual’s alcohol abuse was a transient situation. *Id.* The Personal Psychiatrist also allegedly told the DOE consultant-psychiatrist that the individual had told him that she had stopped consuming alcohol after her discharge from the inpatient treatment center. As the records of Counselor # 1 demonstrate, the individual continued to consume alcohol after her release from the inpatient treatment center.

6. Hearing Officer Determination regarding the Diagnosis in this Case with regard to Alcohol

I have carefully considered all the testimony presented at the hearing and the documentation presented by all the experts in this case regarding their views on the appropriate diagnosis of the individual. I first determined not to accord much weight to the documentation provided by the Addiction Counselor because of the discrepancies in his June and July 2004 letters regarding whether the individual suffered from alcohol

abuse or no alcohol disorder.⁸ Even if I were to accept the Addiction Counselor's diagnosis of Alcohol Abuse, there is no explanation in the record why the Addiction Counselor concluded that the individual could be rehabilitated from that illness after five hours of alcohol education. *See Ex. P.* In the end, the Addiction Counselor's documents are not persuasive either on the issue of his diagnosis or his assessment of rehabilitation.

Next, I could not accord much weight to the documents provided by the individual's Personal Psychiatrist. None of the documents address in any meaningful way the individual's problems with alcohol. It is significant in my opinion that the individual misled her Personal Psychiatrist into believing in April 2002 that she had stopped consuming alcohol. The individual's lack of candor is a negative factor which I will weigh in my overall assessment of whether her security clearance should be reinstated.

Similarly, I could not accord much weight to the PAP Psychologist's opinion that the individual suffered from alcohol abuse in light of the PAP Psychologist's admission that he did not have access to all the facts regarding the individual's alcohol consumption. Again, I am troubled by what appears to be a lack of forthrightness on the part of the individual regarding her alcohol use. The PAP Psychologist who appeared on the individual's behalf at the hearing was clearly surprised to learn that the individual had been consuming alcohol almost every day in the month that preceded his decision to recommend her return to the PAP. The PAP Psychologist's testimony that he relied on the individual's self-reporting and assumed that the individual was honest with him suggests to me that the individual lied to the PAP Psychologist. Again, the facts surrounding the individual's interaction with the PAP Psychologist reflect negatively on her credibility.

In comparing the testimony of the DOE consultant-psychiatrist and the Psychologist, I determined that the DOE consultant-psychiatrist provided more compelling documentary and testimonial evidence to support her diagnosis of Alcohol Dependence than did the Psychologist to support his diagnosis of Alcohol Abuse. Specifically, the DOE consultant-psychiatrist's convincingly explained why the individual meets the DSM-TR-IV criteria for Alcohol Dependence. In contrast, the Psychologist could not articulate at the hearing why the individual's behavior with regard to alcohol did not fall within the ambit of certain DSM-IV-TR criteria for alcohol dependence. The Psychologist's response at the hearing that he "had no opinion" with regard to Criterion (3) of the Substance Dependence Diagnosis section of the DSM-IV-TR appeared to me to be a way to avoid having to admit that the specific criterion was met. I would have been more impressed had the Psychologist explained why the individual's behavior did not meet Criterion (3). In addition, the Psychologist testified that he relied on the testing and recommendation of the Addiction Counselor in reaching his conclusion that the individual suffered from Alcohol Abuse. As discussed above, I am unable to accord much weight to the Addiction Counselor's documents because they contain unexplained discrepancies. With regard to the Psychologist's opinion that the individual used alcohol to medicate her depression, the Psychologist did not explain how that fact, if true, would justify a diagnosis of alcohol abuse instead of alcohol dependence. In the end, while the evidence demonstrates that the individual's Psychologist has provided exemplary

⁸ Had the Addiction Counselor testified at the hearing, he might have been able to clarify this discrepancy.

treatment for the individual's depression and dysthymia, the evidence also shows that the Psychologist has not been actively involved in either the assessment or treatment of the individual's alcohol use disorder. When I compare the detailed Psychiatric Report and testimony of the DOE consultant-psychiatrist on the alcohol issue in this case with the one page letter and the testimony of the Psychologist in this case on that same issue, I find that the weight of the evidence supports the opinion of the DOE consultant-psychiatrist. For this reason, I determine that the evidence in this case supports a finding that the individual suffers from Alcohol Dependence.⁹

Next, I turn to whether the individual has brought forward convincing evidence that she is reformed or rehabilitated from her alcohol dependence for purposes of my making a predictive assessment that her mental illness will no longer pose a potential danger to the common defense and security and is consistent with the national interest.

Mitigation of Alcohol Dependence Diagnosis

In the Psychiatric Report, the DOE consultant-psychiatrist opined that although the individual's alcohol dependence is in remission, she is at high risk for relapse at any time because of her denial and poor insight. Ex. 11 at 20. The DOE consultant-psychiatrist pointed out that the individual was advised and encouraged to attend AA meetings but chose not to continue. She added that the PAP Psychologist and the other credential medical professionals at the OMD advised the individual to continue therapy with Counselor #1 until dismissed yet the individual chose on her own to terminate that relationship. Because of these factors the DOE consultant-psychiatrist determined that the individual was not reformed or rehabilitated from alcohol dependence at the time she examined the individual in June 2003.

In the Psychiatric Report, the DOE consultant-psychiatrist provided the following opinion with regard to what length of time and type of treatment would be necessary for the individual to show adequate evidence of rehabilitation or reformation. For rehabilitation, the individual must: (1) produce documented evidence of attendance at AA 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 non-prescribed controlled substances for a minimum of one year following the completion of this program; (2) satisfactorily complete a minimum of 50 hours of a professionally led substance abuse treatment program, for a minimum of six months, including "aftercare" and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1 and ½ years following the completion of this program.

For reformation, the DOE consultant-psychiatrist presents two alternatives: (1) if the individual goes through one of the two rehabilitation programs listed above, two years of absolute sobriety; (2) if the individual does not go through one of the two rehabilitation programs listed above, three years of absolute sobriety.

⁹ I also considered that the Treatment Center Doctor diagnosed the individual as suffering from Alcohol Dependence when she entered the inpatient treatment facility in April 2002. Since the Treatment Center Doctor did not explain the basis of his diagnosis in his treatment notes or at the hearing, I only accorded neutral weight to the diagnosis.

The individual claims that she last consumed alcohol in February 2003. *Id.* at 206. The individual's husband, mother and Psychologist also testified that the individual stopped drinking alcohol in February 2003. Tr. at 49, 89-90, 140. The individual's husband and mother also testified that the individual does not have any alcohol in the house. *Id.* at 63, 142. The individual testified that she is not tempted by alcohol when she is around it. *Id.* at 192. She also testified that she does not consider herself an alcoholic, "only someone with a drinking problem." *Id.* at 201. The individual explained at the hearing why she does not consider herself to be an alcoholic: she never craved alcohol or was dependent on alcohol, never drank and drove, never consumed alcohol at work, and never drank before work. *Id.* at 202-03. The individual also explained at the hearing that she did not like AA so she stopped attending the AA meetings. *Id.* at 203. She added that she did not go to AA long enough to find a sponsor. *Id.* The individual testified that she is unsure whether she will be able to drink again responsibly. *Id.* at 190. As of the date of the hearing, however, she claims that she does not have any intention of returning to drinking. *Id.*

After listening to all the testimony of the witnesses, the DOE consultant-psychiatrist testified that if the individual is being truthful about not consuming alcohol since February 2003, then she would be reformed.¹⁰ However, the DOE consultant-psychiatrist also testified that the individual is not rehabilitated from her alcohol dependence and is at moderate risk for relapse. *Id.* at 256. At the hearing, the DOE consultant-psychiatrist explained that the "poorest prognosis for a relapse of alcohol dependence is to not consider yourself an alcoholic." *Id.* In a post-hearing submission, the DOE consultant-psychiatrist opined that "unless she is appropriately educated to improve insight and given tools to help her maintain her sobriety, her risk for relapse remains moderate to high." Ex. 29.

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether a person with an alcohol problem has presented sufficient evidence or reformation or rehabilitation to allay security concerns. *See Personnel Security Hearing* (VSO-0298), 27 DOE ¶ 82,828 (2000), *aff'd*, *Personnel Security Review* (VSA-0298), 28 DOE ¶ 83,001 (2000) (affirmed OSA 2000), *Personnel Security Hearing* (VSO-0106), 26 DOE ¶ 82,767 (1997), *aff'd*, *Personnel Security Review* (VSA-0106), 26 DOE ¶ 83,009 (1997). The DOE does not have a set policy on what constitutes rehabilitation or reformation from any alcohol-related problem, but instead makes a case-by-case determination based on the available evidence. Ultimately, I am called upon to make a predictive assessment whether the individual's alcohol dependence no longer poses a danger to the common defense and security and is consistent with the national security.

As an initial matter, I am impressed that the individual has made substantial progress in therapy for her depression. Unfortunately, that therapy did not include treatment for alcoholism. As explained below, the evidence in this case does not allow me to find that the individual's 20 months of sobriety mitigates the security concerns regarding alcohol under Criteria J and H.

¹⁰ The DOE consultant-psychiatrist did not explain why she had deviated from her original requirement that the individual remain abstinent for 36 months to achieve reformation.

In evaluating the totality of evidence before me, several factors persuade me that the individual has not adequately addressed her alcohol dependence. First, the evidence demonstrates that the individual has not accepted the gravity of her alcohol problems. Specifically, the individual testified at the hearing that she is not an alcoholic. She erroneously believes that because she never drank at work, drank before work, received a DWI, or felt dependent on alcohol that she cannot be diagnosed as alcohol dependent. As explained by the DOE consultant-psychiatrist, the individual's lack of insight into her alcohol-related illness is a major impediment to her receiving a favorable prognosis for recovery and increases the probability that she will relapse. Second, the individual has refused on more than one occasion to heed the advice of medical professionals that she seek specific treatment for her alcohol problems. The individual first ignored the advice of Counselor # 1 to continue attending AA. Then, the individual ignored the advice of the Treatment Program Doctor to obtain further treatment for chemical dependency in an Inpatient Treatment Program. The individual further ignored the advice of the PAP Psychologist that she continue seeing Counselor # 1 until Counselor # 1 dismissed her. Third, it appears from the record that the individual misled some mental health professionals about her abstinence from alcohol at different points in time. The PAP Psychologist did not know in August 2002 when he recommended the individual to be reinstated into the PAP that the individual had been drinking excessively one month earlier. The PAP psychologist's testimony that he and other committee members relied on the individual's self-reporting and that he and others assumed the individual was being honest with them suggests that the individual's candor is questionable. In addition, it appears that the individual misled her Personal Psychiatrist to believe that she was abstinent prior to February 2003 when in fact she was not. The individual's pattern of concealing her drinking from credentialed medical professionals makes me question the truthfulness of her statements regarding her abstinence from alcohol since February 2003. Fourth, the individual's future intentions with regard to alcohol consumption are unclear in my opinion. While the individual claimed at the hearing that she did not intend to drink again, she also testified that she did not rule out returning to drinking socially.¹¹ *Id.* at 190. Fifth, I am concerned that the individual's family support network is not as strong as it could be. Specifically, the individual's mother with whom the individual enjoys a close relationship reportedly consumes alcohol to excess. Ex. 28 (Sheriff's Department Incident Supplement Page at 2), Ex 24 at 50. In addition, the individual's husband still consumes alcohol himself although he claims that he supports his wife's decision not to drink. It appears from the record that the individual's marital relationship is fragile in view of the domestic quarrels described by the individual's lawyer as "grabbing and hitting on each other." This instability in the marriage does not appear to form a strong foundation for a good family support network. Finally, even if I were to believe that the individual has maintained her sobriety for 20 months, I am not convinced from the evidence that she can maintain that sobriety without the structure, discipline and accountability of some alcohol rehabilitation program.¹² As the DOE consultant-

¹¹ The DOE consultant-psychiatrist testified convincingly that persons suffering from alcohol dependence can never return to drinking alcohol. Tr. at 247.

¹² It must be emphasized that a Hearing Officer does not end his or her analysis of the evidence in a case even if an expert opines that a person is reformed. As previously noted in this Decision, a determination regarding the restoration of a person's access authorization is a common sense determination that can be made only after evaluating the totality of the evidence in a case.

psychiatrist opined, the individual's risk of relapse is moderate to high if she is not appropriately educated to improve her insight and given the tools to help her maintain her sobriety. Ex. 29.

I also considered whether it is appropriate to find that the individual has mitigated the security concerns associated with her alcohol dependence now that she has her depression under control. The evidence in the record convinces me that such a finding is not warranted in this case for the following reasons.

While the PAP psychologist, the individual's psychologist and the Addiction Counselor all opined that the individual was self-medicating her depression with alcohol,¹³ none of the three experts convinced me that this fact is true. First, all three opinions regarding self-medication were based on a faulty premise, *i.e.*, that the individual suffered from Alcohol Abuse, not the more serious alcohol-related illness, Alcohol Dependence. Second, as previously discussed in this Decision the PAP psychologist rendered his opinion with regard to the individual's alcohol use based on faulty information provided by the individual, *i.e.*, that the individual had stopped drinking. Once the PAP psychologist learned at the hearing that the individual had withheld relevant information from his evaluation, he advised that had he known the extent and duration of the individual's alcohol consumption, he would have recommended that she attend intensive outpatient alcohol program in addition to her treatment for depression. Third, I am unable to accord much weight to the Addiction Counselor's documentary evidence because it contains conflicting diagnoses and lacks substantiation. Fourth, both the DOE consultant-psychiatrist and the Psychologist agree that the two mental illnesses that the individual suffers from are independent dual diagnoses. In the end, I am not convinced that the individual's depression and alcohol dependence are so inextricably intertwined that the apparent resolution on one necessarily negates the other.

In conclusion, I am guided by the United States Supreme Court's decision in *Department of Navy v. Egan*, 484 U.S. 518 (1988) which stated that the "clearly consistent with the national interest" standard for granting of security clearances indicates that security determinations should err, if they must, on the side of denials." *Id.* at 531; *see also* 10 C.F.R. § 710.7(a). After carefully weighing all the evidence in this case, including the documentary and testimonial evidence, I have lingering doubts about the individual's ability in the future to maintain sobriety. This doubt is augmented by the DOE consultant-psychiatrist's prognosis that the individual remains at moderate to high risk of relapse because she has never the insight nor tools to maintain her sobriety. I must therefore err on the side of national security and find that the individual has not mitigated the security concerns associated with Criteria H and J that relate to her alcohol dependence.

¹³ The individual's Personal Psychiatrist opined that the individual's alcohol misuse was a transient situation. However, the evidence developed in the case shows that the Personal Psychiatrist erroneously thought that the individual had stopped drinking while she was being treated for depression.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have determined that the individual has mitigated the security concerns connected with her depression and dysthymia but has not mitigated the security concerns associated with her alcohol dependence. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties ay seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: May 24, 2005