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June 30, 2005

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-0131

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Local Security Office suspended the Individual's access authorization pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's access authorization should not be restored.

**I. Background**

The Individual is employed by a contractor at a DOE facility. The facts as stated in the February 13, 2004 Notification Letter are unchallenged. The Individual was charged with Driving While Intoxicated (DWI) in August 2002. DOE Exhibit (DOE Ex.) 1 at 3.<sup>2/</sup> Because of the arrest, he was evaluated by a DOE consulting psychiatrist. *Id.* When the psychiatrist evaluated the Individual after the August DWI arrest, he found that he met diagnostic criteria for Alcohol Abuse set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4<sup>th</sup> edition, Text Revision (DSM-IV-TR). *Id.* The DOE consulting psychiatrist opined that the Individual needed one year of outpatient treatment, with maintenance of sobriety, to demonstrate adequate evidence of rehabilitation or reformation. DOE Ex. 3 at 9.

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<sup>1/</sup> Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

<sup>2/</sup> The individual had also been arrested for DWI in January 2001, and December 1987.

Because the derogatory information concerning the Individual had not been resolved, the Local Security Office obtained authority to initiate this administrative review proceeding. The Local Security Office then issued a Notification Letter to the Individual, citing the DOE consulting psychiatrist's diagnosis of Alcohol Abuse as derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J).<sup>3/</sup>

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

At the hearing, the Individual was represented by his previous supervisor. He offered his own testimony as well as the testimony of his counselor, his current supervisor, a medical doctor who evaluated him in 2003, his wife, and his previous supervisor. The Local Security Office presented one witness, the DOE consulting psychiatrist. The Local Security Office entered 23 exhibits into the record. The Individual entered 3 exhibits.

## *II. Standard of Review*

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." See 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation,

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<sup>3/</sup> Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After consideration of all the relevant information in the record, I conclude that the security concerns raised by the derogatory information have not been mitigated. Consequently, it is my decision that the Individual's access authorization should not be restored.

### *III. Findings of Fact*

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

The Individual has had three DWI arrests over a period of 16 years. However, the last two occurred within a year and a half of each other. Because of the last two reported DWI arrests, the Local Security Office interviewed the Individual and concluded that he should be evaluated by a DOE consulting psychiatrist. In reaching this decision, the Local Security Office relied on a previous evaluation conducted by the same DOE consulting Psychiatrist as well as the previous 1987 DWI arrest.

Subsequent to his 2003 interview with the Individual, the DOE consulting psychiatrist wrote a report on the Individual describing his findings. DOE Ex. 3. The report states that the DOE consulting psychiatrist examined the Individual and administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) . The Individual was also given a number of laboratory tests. All the test results were normal and showed no alcohol or drug use. Based upon the examination and his review of the DOE records, the DOE consulting psychiatrist determined that the Individual met two of the diagnostic criteria for "Alcohol Abuse" contained in the DSM-IV. *Id.* at 7. In the Report, he also opined that the Individual had not shown adequate rehabilitation, and he would recommend that the Individual have at least one year of abstinence and a year of outpatient treatment for the Individual to be considered rehabilitated or reformed. *Id.* at 9. Elaborating further, the DOE consulting psychiatrist indicated that intensive participation in Alcoholic Anonymous (AA), attending at least one meeting a week, would be required to provide adequate treatment. *Id.* He also suggested, but did not require, that the Individual obtain a sponsor at AA. *Id.*

### *V. The Hearing*

The Individual testified on his own behalf. The Individual testified that he has been going to AA regularly since April 2003. Hearing Transcript at 16 (Hrg. Tr.). The AA group he attends is anonymous, so he could not get a sign in sheet or anyone to come to the hearing to testify. *Id.* He testified that sometimes he goes three times a week and sometimes he goes once a week. His attendance depends on his family responsibilities. *Id.* He testified

that he did not go to AA meetings when he was on official travel because of the schedule of the meetings. *Id.* While currently abstinent, the individual admitted he had consumed alcohol once in July 2004 and on one other occasion prior to that but since April 2003. The Individual testified that he last consumed alcohol at the end of July 2004. *Id.* He testified that his alcohol consumption at that time was caused by the stress resulting from the birth of his second child. *Id.* He stated that he has not consumed alcohol since the end of July 2004 and drank on one occasion prior to that since April 2003. *Id.* He testified that he realizes now that he cannot even have an occasional drink on social occasions. Hrg. Tr. at 32.

Two of the Individual's supervisors also testified. Both supervisors praised his work. One supervisor, who also served as the Individual's representative, reported the Individual for "fitness for duty." Hrg. Tr. at 84. He testified that reporting someone in for fitness for duty is an expression of a concern that there may be a problem with the employee. *Id.* at 86. He testified that he visited the Individual while the Individual was on travel. The day the supervisor visited, the Individual was absent. Another co-worker at the travel site indicated that he thought the Individual's absence might be related to alcohol use and stated that he had some experience with a person who consumes excessive amounts of alcohol. *Id.* at 84. The supervisor reported him for fitness for duty not because he had any direct knowledge or suspicion that the Individual has a problem with alcohol, but because he was concerned that there might be a problem with the individual. *Id.* This supervisor also testified that since the Individual was reported for fitness for duty, the Individual's attitude about alcohol has changed. *Id.* He believes the Individual has accepted responsibility for the problem. *Id.*

The Individual's wife testified on his behalf. She testified that she has seen a change in the Individual since he has attempted to maintain sobriety. Hrg. Tr. at 72. She testified that the Individual himself will tell you he is an alcoholic. She testified that he goes to meetings sometimes two or three times a week. *Id.* Other weeks, because of family obligations, he will go less frequently. *Id.* at 79. She stated that he does not drink at all in social situations now. *Id.* at 73. She also stated that they attended a family marriage celebration where alcohol was prevalent. The day after all the company left, the Individual stated that he had to go to a meeting, because of the alcohol that had been present at the social functions surrounding the wedding. *Id.* at 73. She stated that there has been a lot of stress in their relationship because of the recent birth of their second child, but she sees a real change in her husband since the end of July 2004. *Id.*

The Individual's counselor testified for the Individual. He stated that the Individual first came to see him as a result of a fitness for duty referral. Hrg. Tr. at 59. He stated that he met with the Individual twelve times in six months. He believes that the Individual is serious about his dealing with his problem. *Id.* at 60. The Individual's Counselor testified that the Individual was open about his problem. *Id.* at 68. He continued that he was not concerned about the fact that the Individual did not have a sponsor at AA. *Id.* at 64. He

was, however, concerned about the Individual consuming alcohol on two occasions, once in May or June of 2004 and the other in July 2004. *Id.* at 66.

A physician who evaluated the Individual pursuant to the request for a fitness for duty report testified. He stated that he asked the Individual to get a sponsor at AA. Hrg. Tr. at 53. He was concerned the Individual had not gotten a sponsor, but the Individual's counselor did not have concerns, so the Employee Assistance Program Office closed the fitness for duty report with no negative finding. *Id.* at 55.

At the hearing, the DOE Psychiatrist reiterated his diagnosis. Pursuant to the DSM-IV-TR, for someone to be diagnosed as abusing alcohol, he must meet at least one criterion from a list of criteria. Hrg. Tr. at 94. First, he determined that the Individual met Criterion (2): "recurrent alcohol use in situations in which it is physically hazardous." He stated that the Individual's three DWI citations fulfill Criterion (2) because driving an automobile can be physically hazardous. *Id.* He also concluded that the Individual had met Criterion (3): "recurrent alcohol-related legal problems." *Id.* Again, the Individual's three DWIs fulfill this criterion. The DOE Psychiatrist stated that the Individual's continued alcohol use and driving in the face of warnings by DOE also fulfilled Criterion 3. *Id.* The DOE consulting psychiatrist concluded that he would recommend that the Individual be abstinent from July 2004, the last time he consumed alcohol, for a period of one year. *Id.* at 109.

#### *V. Findings and Conclusions*

After reviewing the expert psychiatric testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does have an alcohol problem that raises a security concern. I also find that although the Individual is on the road to rehabilitation or reformation, his relapses in May and July of 2004 show inadequate evidence of rehabilitation or reformation. I was impressed with the candid testimony of both the Individual and his wife. Also in his favor, he has the support of his supervisor. His family life is stressful with the arrival of a new baby. However, he is seeing a counselor regarding that stress. I believe the Individual is committed to sobriety; however, at the time of the hearing, he was only six months into the one year requirement laid out by the DOE consulting psychiatrist.

In sum, I find the expert testimony of the DOE consulting psychiatrist, the physician, and the Individual's counselor convincing. Consequently, I find that concerns raised by the Individual's diagnosis of alcohol abuse have not been mitigated at the time of the hearing.

#### *IV. Conclusion*

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual's eligibility for a security clearance. However, as explained in this Decision, I find the Individual did not mitigate the DOE's Criterion J concerns

regarding his alcohol abuse. I am therefore unable to find that restoring the Individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the Individual's access authorization should not be restored.

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

Date: June 30, 2005