

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

November 29, 2006

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

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: April 25, 2005

Case Number: TSO-0235

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization<sup>1</sup> 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 individual's access authorization was suspended by the Manager of a Department of Energy (DOE) local office pursuant to the provisions of Part 710. Based on the record before me, the individual's access authorization should not be restored.

***I. Background***

The individual is an employee of a contractor at a DOE facility. After the individual was arrested for Driving While Intoxicated (DWI) on January 18, 2004, the DOE local office conducted Personnel Security Interviews (PSIs) with the individual on March 16 and June 6, 2004. *See* DOE Exhibits 1-15, 1-16, 1-24. Because the security concern remained unresolved after the PSIs, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). The psychiatrist interviewed the individual on July 27, 2004. *See* DOE Exhibit 1-7. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office suspended the individual's access authorization, and proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the

---

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

possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. DOE Exhibit 1-3.

In the Notification Letter, the DOE characterized some of this information as indicating 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" and suffers from "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the judgment or reliability of" the individual. *See* 10 C.F.R. § 710.8(h), (j). These statements were based on the DOE psychiatrist's August 9, 2004 report, which included a diagnosis that the individual suffers from "Substance Abuse, Alcohol," and an opinion that the individual "has been and is a user of alcohol habitually to excess. . . ." DOE Exhibit 1-7 at 52, 55. The Notification Letter also cited the individual's 1982 arrest for Driving Under the Influence, a citation for Possession of and Open Container in a Restricted Area in 1983 or 1984, and his 2004 arrest for DWI.

Additionally, the Notification Letter set forth information indicating that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." *See* 10 C.F.R. § 710.8(l). In support of this statement, the Notification Letter cited allegations that, over a 15-year period from 1986 to 2001, the individual had sexually molested two daughters of his former girlfriend (1986 to 1989) and the daughter of his ex-wife (from approximately 1989 to 2001). Also cited were statements of the DOE psychiatrist that he was "between 51% and 94% certain that [the individual] is a pedophile" and that the alleged "sexual behavior with the pre- and peri-pubescent girls probably occurred. By 'probably,' I mean that the probability is between 51% and 94%." DOE Exhibit 1-7 at 52; DOE Exhibit 1-9 at 3. Finally, the Notification Letter cited a test performed by a forensic psychologist. This test classified the individual as one who "has a high probability of attempting to conceal having sexually abused a child." DOE Exhibit 1-12 at 6.

In response to the Notification Letter, the individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter. At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, a personal friend, two supervisors at his place of work, and the DOE psychiatrist. Both parties submitted exhibits prior to the hearing. I closed the record upon receiving the transcript of the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. Based on the evidence before me and for the reasons explained below, I conclude that the security concern has not been sufficiently resolved.

## **II. Analysis**

### **A. Concern Related to Use of Alcohol (10 C.F.R. § 710.8(h), (j))**

#### **1. Basis for the Concern**

In his August 9, 2004 report, the DOE psychiatrist concluded that the individual met the following criteria for Substance Abuse, Alcohol, set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM):

A. A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12 month period.

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home . . .

(2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)

(3) recurrent substance related legal problems (e.g., arrests for substance related disorderly conduct)

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance . . .

B. The symptoms have never met the criteria for Substance Dependence for this class of substance.

DOE Exhibit 1-7 at 51. There is no dispute that the individual meets Criterion B above, i.e., that he does not meet the criteria for substance dependence. Instead, the factual dispute centers on the DOE psychiatrist's opinion that the individual met "Criterion A2 in 2004 and [that] he met Criterion A3 in 1982 and 1983." *Id.*

#### **a. Alcohol-Related Legal Problems in 1982 and 1983**

To support his finding of "recurrent substance related legal problems" in 1982 and 1983, the DOE psychiatrist cites a June 1982 arrest of the individual for DWI, a November 1982 citation for providing his military ID to an underage airman, and a May 1983 citation for possession of an open

container in a restricted area. *Id.* at 40. However, the individual contends that alcohol was not involved in the November 1982 incident, and that he was not “operating a vehicle” when he was charged with DWI, but rather was merely demonstrating to his friend how to operate the manual transmission on his car. Transcript of Personnel Security Hearing (Tr.) at 148-53.

Though the purpose of the individual in providing his ID to an underage airman was to facilitate the airman’s entry to a bar, I can find nothing in the record indicating that this incident was in any way related to the individual’s use of alcohol. Nonetheless, there is no dispute that his use of alcohol led to the June 1982 (DWI) and May 1983 (open container) incidents, meaning that together they can reasonably be described as “recurrent substance related legal problems” as described in Criterion A3 above “occurring within a 12 month period.” See DOE Exhibit 1-19 (individual states in a 1991 PSI that, prior to his June 1982 arrest, “one of the guys was drinking, the rest of us were drinking pretty heavily”). Thus, the individual’s implication that he was technically not guilty of DWI in June 1982 does not sufficiently undercut the factual basis for the DOE psychiatrist’s finding that the individual met Criterion A3 in 1982 and 1983.

**b. Use of Alcohol in Physically Hazardous Situations in 2004**

The DOE psychiatrist notes in his report the individual’s admission that, at least once in the year prior to his January 2004 DUI arrest, he drove after becoming intoxicated. DOE Exhibit 1-7 at 44. At the hearing, the individual downplayed his earlier statement.

Normally on those times -- and like I told [the DOE psychiatrist], I would sit around and drink a couple of cokes and coffee before I left and give it some -- you know, I'd be feeling quite a bit less inebriated. I didn't think I was up to the level where it was illegal.

Tr. at 142. However, when I asked the individual if he thought he had similarly “totally sobered up” before his January 2004 DUI arrest, when his blood alcohol content was over the legal limit at .09, the individual replied, “I thought so. Apparently not, if the blood alcohol level was that high.” Tr. at 144. In any event, Criterion A2 does not require that a person be intoxicated beyond a particular legal limit in order for the situation to be considered “physically hazardous.” See Tr. at 141 (testimony of DOE psychiatrist that “the criteria doesn’t even say intoxicated”). Thus, the record supports a finding that the individual used alcohol in a physically hazardous situation, i.e., became intoxicated prior to driving an automobile, at least once in the twelve months prior to his January 2004 DUI arrest. There is therefore sufficient support in the record for the DOE psychiatrist’s conclusion that the individual met Criterion A2 in 2004.

The individual submitted information to demonstrate “that people who have a problem abusing alcohol have [certain] characteristics, and I've tried to show, through testimony of witnesses and [letters of recommendations] that I don't have those symptoms.” Tr. at 147. Specifically, he provided an “Alcohol Alert” published by the National Institute on Alcohol Abuse and Alcoholism, for the

purpose of showing that “alcohol abusers frequently have work related problems, . . .” Individual’s Exhibit 13. He also presented the testimony of individuals that support his contention that he does not have alcohol-related work problems.

However, this evidence in no way undercuts the diagnosis of the individual by the DOE psychiatrist under the criteria for substance abuse set forth in the DSM. The DOE psychiatrist’s diagnosis was not based on a finding that individual had work-related problems, which would appear to fall under Criterion A1 of the DSM criteria for substance abuse set forth above (“recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home”). Instead, the DOE psychiatrist cited Criteria A2 and A3, two criteria for which I find above there was a factual basis in the record.

Finally, the individual notes that when he was evaluated by a psychologist to which he was referred by the DOE psychiatrist, the psychologist administered the Substance Abuse Subtle Screening Inventory (SASSI), but the psychologist’s report did not include the results of this test, which the individual states has “an overall empirically tested accuracy of 93 percent.” Individual’s Exhibit 1 at 3.

Though the individual is correct that there are no SASSI results in the record, I cannot assume that the results of the SASSI were favorable to the individual based solely on the lack of reported results. Moreover, assuming, *arguendo*, that the results did not indicate a substance use disorder, this would not negate the diagnosis of the DOE psychiatrist. First, according to a National Institutes of Health publication on the SASSI, the accuracy rate of the test cited by the individual appears to apply to a diagnosis of substance *dependence*, not substance abuse, which is the diagnosis at issue here. [http://pubs.niaaa.nih.gov/publications/Assesing%20Alcohol/InstrumentPDFs/66\\_SASSI.pdf](http://pubs.niaaa.nih.gov/publications/Assesing%20Alcohol/InstrumentPDFs/66_SASSI.pdf) (“The Adult SASSI-3 helps identify individuals who have a high probability of having a substance dependence disorder with an overall empirically tested accuracy of 93 percent.”). Further, as noted by the SASSI Institute, “a given SASSI result may be one of the 93% overall correct identifications or it may be one of the 7% overall errors in classification. Therefore, it is important to learn as much as possible about factors that might affect the accuracy of any particular SASSI result.” SASSI Institute Newsletter, Volume 5, Number 4, [http://www.sassi.com/docs/news\\_5\\_4.htm](http://www.sassi.com/docs/news_5_4.htm) (November 1997).

In sum, the overall record supports the factual basis cited by the DOE psychiatrist for his diagnosis. Accordingly, there is clearly a valid basis for concern under the regulatory criteria of 10 C.F.R. § 710.8(h) and (j). In other DOE access authorization proceedings, hearing officers have consistently found that the excessive use of alcohol might impair an individual’s judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE § 82,807 (2005) (and cases cited therein).

**2. Whether the Concern Related to Alcohol Use Has Been Resolved**

In his report, the DOE psychiatrist concluded that “until such time as he is showing adequate evidence of rehabilitation or reformation [the individual] is not at a low risk of continuing to abuse alcohol and drink habitually to excess, . . .” DOE Exhibit 1-7 at 55.

As adequate evidence of rehabilitation the subject can do one of the following:

- (1) Produce documented evidence of attendance at Alcoholics Anonymous (AA) with a sponsor and working on the 12 steps at least once a week for a minimum of 100 hours over at least a year’s time and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years.
- (2) Satisfactorily complete a professionally run alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years.

Any future use of alcohol or non-prescribed controlled substances will be evidence that the subject is no longer showing adequate evidence of rehabilitation.

As adequate evidence of reformation there are two options:

- (1) If the subject goes through one of the two rehabilitation programs above, then a minimum of two years of abstinence from alcohol and all non-prescribed controlled substances is necessary to show adequate evidence of reformation.
- (2) If the subject does not go through one of the two rehabilitation programs above, then a minimum of three years of abstinence from alcohol and all non-prescribed controlled substances is necessary to show adequate evidence of reformation.

*Id.* at 54.

At the hearing, the individual offered no evidence of steps toward rehabilitation or reformation as set forth above. The DOE counsel asked the individual, “[W]ould it be fair for me to say that, since you disagree with this diagnosis, you don't believe that you need to show anybody that you've reformed or rehabilitated?”

A. I don't go any place that I have to drive and drink anymore.

....

Q. So you would say you don't need to show reformation or rehabilitation?

A. I don't believe so, no.

Tr. at 137-38.

As the individual has not completed, or even attempted, the steps toward rehabilitation or reformation set forth by the DOE psychiatrist, it would appear that the individual is still, in the words of the psychiatrist, "not at a low risk of continuing to abuse alcohol and drink habitually to excess, . . ." As I pointed out in my questioning of the DOE psychiatrist at the end of the hearing,

My job is really a predictive assessment. It's to say, "Okay, what are the chances he's going to abuse alcohol, drink to excess in the future?"

. . . .

[I]f you had to rate his risk on a scale of one to ten, where would you put him?

[DOE psychiatrist]: The best I could put it is that I believe it's more likely than not, over the next five years, he'll either abuse alcohol again or he'll drink habitually to excess.

MR. GOERING: Okay. That's fair enough.

[DOE psychiatrist]: That's, I would say, an educated opinion based on all of the facts in the case.

MR. GOERING: Okay.

[DOE psychiatrist]: I don't hear anything from him that takes responsibility for his alcohol use. I just hear excuses. So that makes me be less than optimistic about his prognosis for simply abusing it or drinking habitually to excess.

MR. GOERING: Of course, his opinion is he doesn't have a problem; right?

[DOE psychiatrist]: Right.

[Individual]: Well, my opinion was I didn't realize that I was getting close to that level for driving, and I've quit doing that.

MR. GOERING: Okay.

[Individual]: The drinking habitually to excess, I still, I guess you would say, drink habitually. I might go down to [a local establishment], listen to the band, maybe meet some people. I don't drive after that.

Tr. at 158-59.

The point missed by the individual in his testimony is that, whether driving or not, a person who is intoxicated normally suffers from some degree of impaired judgment. And I am concerned that the individual does not appreciate the impact his future drinking may have on his ability to protect classified information. For example, the individual testified at the hearing,

[Individual]: Well, there is a lot of levels of intoxication, too. If I was getting so drunk that I didn't know what I was saying –

[DOE psychiatrist]: Well, you defined intoxication in such a way that, to me, if somebody is getting intoxicated eight or nine times a year, that has access to classified information –

[Individual]: Well, if your speech is slurred a little bit and you're relaxed, I think that's classified as social drinking. If you drink a little to relax, have some fun - - I mean, I'm not going there to get -- to get blitzed.

Tr. at 160.

Based upon the testimony of both the individual and the DOE psychiatrist, the concern related to the individual's alcohol use has not been resolved.

## ***B. Concern Related to Alleged Child Molestation and Pedophilia (10 C.F.R. § 710.8(l))***

### ***1. Basis for the Concern***

As a concern under 10 C.F.R. § 710.8(l), the Notification Letter cited allegations that, over a 15-year period from 1986 to 2001, the individual had sexually molested two daughters of his former girlfriend (1986 to 1989) and the daughter of his ex-wife (from approximately 1989 to 2001). The record further reflects an allegation of sexual abuse by a friend of two of alleged victims, the daughters of his former girlfriend, in the late 1980s. DOE Exhibit 1-19 at 45. Also cited were statements of the DOE psychiatrist that he was “between 51% and 94% certain that [the individual] is a pedophile” and that the alleged “sexual behavior with the pre- and peri-pubescent girls probably occurred. By ‘probably,’ I mean that the probability is between 51% and 94%.” DOE Exhibit 1-7 at 52; DOE Exhibit 1-9 at 3. Finally, the Notification Letter cited a test performed by a forensic psychologist. This test classified the individual as one who “has a high probability of attempting to

conceal having sexually abused a child.” DOE Exhibit 1-12 at 6. The individual flatly denies that he has ever sexually abused a child. Individual’s Exhibit 1.

It is important to note here that the purpose of this proceeding is not to determine whether the individual, in fact, molested children. If it were, the evidence of doubt raised by the individual would perhaps be sufficient to spare him a negative judgment, since there is clearly some doubt as to whether the individual is guilty of that which he is accused. This is evidenced by the fact that the DOE psychologist could not find, beyond a probability of 94%, that the individual is a pedophile. It is also true, as the individual points out, that criminal charges against him were not pursued based upon the allegations made in 1988 or 2001. Further, none of his accusers testified in this proceeding, where they would have been subject to cross-examination, and where I could have observed first-hand their testimony.

But this is not a proceeding where the accused gets the benefit of a reasonable doubt, as in a criminal case. Neither are the allegations required to be proven by a preponderance of the evidence, as in a typical civil proceeding. Thus, for example, if there were only a 49% chance that the individual is a pedophile, the risk to the national security would almost certainly be too great to warrant restoration of his security clearance. *See* 10 C.F.R. § 710.7(a) (“Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.”). This does not mean that an accusation of child molestation is alone necessarily sufficient to disqualify an individual from holding an access authorization. *See, e.g., Personnel Security Hearing*, 26 DOE ¶ 82,785, Case No. VSO-0141 (1997) (“concern raised by the allegation [of child molestation] against the individual, the credibility of which is seriously undermined by the evidence in the record, is more than sufficiently mitigated by facts in the record which are favorable to the individual”), affirmed (OSA 1997). Indeed, in the present case, the individual continued to hold a clearance in the 1990s despite the DOE’s knowledge of prior allegations of child sexual abuse. DOE Exhibit 2-12.

However, the present case distinguishes itself in that four children have now raised allegations against the individual, three girls in the late 1980s, and another in 2001. Regarding the earlier allegations, by two daughters of his former girlfriend and one of their friends, the individual states,

I dumped that gal when I met my ex-wife, and she was furious about it, and she said - she made all kinds of allegations. I mean, it's in the report there. She said I was copying software and selling it, stealing government property and selling it, all kinds of things, but, of course, the only thing anybody listened to, since they heard it, was that sexual thing, and so she just expanded on that.

Tr. at 126. Thus, the individual contends that the mother raised false allegations regarding her daughters, and that the daughters’ close friend who made a separate allegation “just was lending her support.” Tr. at 128. As for the allegations by his ex-wife’s stepdaughter in 2001, the individual states that his ex-wife was living with him at the time of the earlier allegations, and “saw how devastating it was.” Tr. at 125. The individual testified that, because his ex-wife has a son by him,

he “believe[s] a lot of the way the allegations came out this time is it was motivated by money. I mean, it got her child support increased, it got me out of my son's life, gave her complete control of my son.” *Id.* While the individual may be correct in the explanations he offers, another explanation, and the simplest one, given allegations by four separate individuals, is that all of the allegations are true.

In any event, as stated above, I do not need to conclude that the allegations are true in order to find that the allegations raise a substantial doubt regarding the ability of the individual to properly safeguard classified information. In fact, with the individual's history, there is a significant risk that he would be subject to pressure, coercion, exploitation, or duress by a person raising yet another allegation of sexual abuse, even a false allegation, and this would be true even if all of the past allegations were false. As unfair as it may be to the individual, this simply highlights the fact that the purpose of this proceeding is not to determine the ultimate truth of the allegations against the individual, but rather to evaluate a potential future risk to the national security. In this context, the probability that others would likely draw an inference of guilt from the circumstances can raise a significant concern, even in the absence of more concrete proof.

Moreover, this substantial doubt raised here would exist in the absence of the opinions of the DOE psychiatrist and the forensic psychologist, both of which the individual goes to great lengths to discredit. Thus, I do not need to address at length the factual assumptions underlying these opinions, many of which the individual contends are “erroneous.” Individual's Exhibit 1 at 5.

However, there is at least one finding by the forensic psychologist that merits discussion here, the results of the Abel Assessment for Sexual Interest (AASI) administered to the individual. This test does not rely upon facts disputed by the individual. Rather, the test records a subject's reaction to a number of slides presented to him visually, and also relies on the responses of the subject to a questionnaire that includes over 600 items. DOE Exhibit 1-12 at 5-6. According to the forensic psychologist, the “procedure generates probability values that indicate the degree to which a client matches other individuals who have molested a child in the same age and gender category as has been alleged towards the client.” *Id.* at 6. The psychiatrist reported that the individual's

Abel response profile is classified in the denier-dissimulator category. That classification suggests a client who does not show overt sexual interest in children on direct viewing time, but a client who has a high probability of attempting to conceal having sexually abused a child. This classification is not perfect, but research with this procedure indicates [it is] approximately 80% [accurate] in classifying such persons.

*Id.* In response to these reported results, the individual contends that the slide projector was “in need of service as it sometimes took two or three key presses to get it to respond.” Individual's Exhibit 1. The individual also presented an article authored by an Assistant United States Attorney entitled “Using the Abel Assessment for Sexual Interest™ to Infer Lack of Culpability in a Criminal Case.”

Individual’s Exhibit 11. The article concludes, “Given the lack of adequate, independent studies to support the accuracy of the AASI, prosecutors should argue that the research falls short of proving the relevance, reliability and acceptance necessary for its use in criminal trials.” *Id.* at 5.

While this article raises valid issues regarding the accuracy of the AASI generally, I conclude that the results in the present case are entitled to at least some weight. For example, the article cites the exclusion of the results of an AASI from a criminal trial in a United States District Court, in part because “a 24 percent rate of false negative results does not assist the jury in understanding the evidence or determining a fact in issue.” *Id.* at 3. However, even assuming the AASI can be faulted for producing “false negative results,” it does not follow that test produces a similar proportion of false positive results, the type of error claimed by the individual in this case. Second, the article principally addresses the admissibility of the AASI before a lay jury, under the standards set forth by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). By contrast, the present proceeding is more akin to a bench trial, where a judge rather than a lay jury is the finder of fact. *See Fiero v. Gomez*, 865 F.Supp. 1387 (N.D. Cal. 1994) (in a bench trial “concerns about the usefulness of various portions of the scientific testimony more appropriately can be addressed through determination of the weight to be accorded the testimony, rather than through the threshold determination of admissibility”), *aff’d on other grounds*, 77 F.3d 301 (9th Cir.), *vacated on other grounds*, 519 U.S. 918 (1996). Finally, the article notes that while some courts have excluded AASI results, others have found them admissible. Individual’s Exhibit 11 at 5.

Again, the multiple allegations in the present case are alone sufficient to raise a valid security concern. The results of the AASI test administered to the individual simply add more doubt regarding the suitability of the individual to hold an access authorization. Given this valid concern, I now address whether there is evidence in the record that sufficiently resolves the concern raised regarding the individual’s behavior.

## ***2. Whether the Concern Related to Alleged Child Molestation Has Been Resolved***

While it is admittedly difficult to overcome the security concerns raised by allegations of child sexual abuse, it is not impossible. In one prior case, already cited above, the credibility of the individual’s testimony and his record as a foster parent of six children and a teacher of hundreds of others was sufficient to resolve the concern raised by one isolated accusation of abuse. *Personnel Security Hearing*, 26 DOE ¶ 82,785, Case No. VSO-0141 (1997), affirmed (OSA 1997). But, as noted above, the present case is distinct in that it involves multiple allegations, making the concern even more difficult to resolve. As for evidence that might help to resolve that concern, I find below that the record of positive or benign interactions between the individual and children is sparse. Further, my opinion of the individual’s credibility is diminished by inconsistencies between his testimony at the hearing and his statements in two previous PSIs.

**a. Character Witnesses**

The individual provides ample evidence of colleagues and friends that universally find him to be honest, reliable, and trustworthy, particularly in the work environment. *See* Individual's Exhibit 6. However, of the three witnesses presented by the individual, only one commented on the individual's behavior around children. Tr. at 83-110. When this witness, a friend of the individual, was asked for his opinion of the allegations against the individual, he replied,

I think it's ridiculous. I've observed him before I even knew of any of this. Anybody that comes around my family, I observe them and I watch them, because I want to protect my family.

My daughters climb on him, and he's -- he's very understanding of it, but just like anybody, he gets tired of it after a while, you know, so that's enough, and it's very normal.

He doesn't -- he's not like excited to have them climb on him or anything. There is nothing sexual there. It's just someone interacting with children. He has a blast with them, and they love to be around him, and this has gone on for several years, so there is nothing behind the scenes that I haven't seen, or anything, or they wouldn't want to be around him. They ask me, "Why don't we have [the individual] over tonight? We'll play some volleyball." "Okay."

Tr. at 107.

This testimony is impressive in that, while his friend is apparently aware of the allegations against the individual, he trusts the individual enough to allow him to spend a lot of time around his daughters. Again, however, it is unfortunately the only such evidence presented in this case. For example, one of the written statements submitted on behalf of the individual was authored by the parent of one of his accusers, the friend of the two daughters of his former girlfriend who also accused the individual of sexually abuse. Conspicuously absent from that statement is any mention of the author's opinion of the allegations raised by his daughter, or any positive testimony concerning the individual's interaction with the girl.

**b. Credibility of the Individual**

In a June 27, 1991 PSI, the individual discussed the allegations of sexual abuse made by two daughters of his former girlfriend and one of their friends. *See* DOE Exhibit 1-19 at 29, 45. In the same interview, the individual said of the friend who made the allegation, "she was always in trouble . . . they lived three or four blocks away." However, in a June 6, 2004 PSI, when asked about "an allegation that you had not only, had molested her two children but a neighbor's child," the individual responded,

Individual: A neighbor's child?

Personnel Security Specialist: Yeah, a female child. Have you –

Individual: I –

Personnel Security Specialist: --was you aware of that?

Individual: No. I, I can't even imagine what neighbor's child it would have been.

Personnel Security Specialist: Okay.

Individual: I can't think of anyplace we lived that we had, neighbor's children that ever –

Personnel Security Specialist: Okay

Individual: -- spent any time with us.

DOE Exhibit 1-15 at 62. At the hearing, the individual explained his answer at the PSI by stating, “that gal was never a neighbor of ours, she was one of my boss' daughters.” Tr. at 73. The individual then said later in the hearing regarding the girl, “Like I said, she was a real good friend of [his former girlfriend's daughters]. She was a neighbor.” Tr. at 126.

It is possible, though very difficult to believe, that the individual misspoke (or was misrecorded) in both the 1991 PSI and the hearing in this matter when he stated that the girl in question “lived three or four blocks away” and “was a neighbor.” Even if I were to accept such an incredible explanation, the larger point is that the individual clearly was aware that a friend of the daughters of his former girlfriend had made an allegation against him. DOE Exhibit 1-19 at 45 (in 1991 PSI, individual answers “Yeah” to question whether he knew “for sure that [the friend] made, um, one single allegation that you touched her bre—tried to touch her breast”). Thus, when asked in the 2004 PSI about allegations that he “not only” molested his former girlfriend's daughters “but a neighbor's child,” the individual could have simply corrected the personnel security specialist by telling him that the other girl who had accused him was not, in fact, a neighbor. Instead, it appears that he, at worst, lied, and at best, feigned ignorance as to what the questioner could have been talking about.

Further, in his June 6, 2004 PSI, immediately after discussing why he did not undergo a required psychological evaluation after the most recent allegations in 2001, and noting that his attorney had advised him against the evaluation, the individual was asked, “Did a police officer ever, uh, attempt

to report or contact you to ask you questions about these allegations and you referred them to your attorney?”

Individual: No, was never contacted by a police officer.

Personnel Security Specialist: Really?

Individual: Now, uh, I had a picture that a friend's daughter had colored and I had it hanging on my refrigerator and somebody reported that to Social Services . . . . And I had a . . . social worker stop by one day out of the blue, . . .

DOE Exhibit 1-15 at 48. As a police department offense report in the record clearly states that a police officer attempted to contact the individual in December 2001 and received a voice mail from the individual “advising me to call his attorney,” DOE Exhibit 1-26 at 6, the individual does not deny that the statement as recorded in the PSI transcript was false. Instead, he claimed at the hearing that

if you examine the transcript of the interview that he bases this statement on . . . , it is obvious that either the interview tape or the interview transcript has been edited or altered to make it look like I am denying that the police contacted me.

As can be plainly seen, [the Personnel Security Specialist] and I are discussing the 2001 allegations. He asked if the police ever contacted me, it appears as if I answer no, and then myself and [the personnel security specialist] continue discussing different allegations.

There has been a portion of the interview removed to move my negative answer to a different question to a place where it will make me appear to be dishonest.

This altered transcript has been entered into evidence against me as an official government document. It is possible I may have uncovered more proof of this kind of deception had I been given ample time to prepare this case.

Tr. at 17-18.<sup>2</sup>

---

<sup>2</sup> The hearing in this case was held over five months after the date of the Notification Letter, and over three months after the individual's request for a hearing was received by the OHA, after the OHA Director approved a 30-calendar-day extension beyond the 90 calendar days within which the Part 710 regulations require that a hearing be held. 10 C.F.R. § 710.25(g). The transcript of the PSI at issue was provided to the individual over 1½ months prior to the hearing.

The individual's claim is ludicrous on its face. A reasonable reading of the relevant portion of the transcript shows that the personnel security specialist's question flowed naturally from a preceding answer regarding the same allegations, where the individual reported that his attorney had advised him to not undergo a psychological evaluation after the allegations were raised in 2001. While it is true that, after the individual's dishonest answer, the interview abruptly changes subjects, that too fits appropriately in context, as the individual clearly attempts to evade the question of whether he was contacted by the police officer, and instead brings up an entirely different incident in which he was visited by a social worker. Moreover, I have listened to the audio tape of this portion of the PSI, and find no apparent evidence of nefarious editing.

I cannot definitively conclude from the above examples that the individual is lying about the allegations regarding child sexual abuse, and I cannot completely rule out the possibility that, despite evidence to the contrary, the individual may have been falsely accused. But my opinion of the individual's credibility, based on these instances and my observation of his general demeanor during the hearing, is not such that it helps resolve the obvious security concerns raised by these troubling allegations.

### **III. Conclusion**

Upon consideration of the record in this case, I conclude that there remains a substantial doubt regarding the individual's eligibility to hold an access authorization, due to unresolved concerns stemming from both the individual's use of alcohol and multiple allegations of child sexual abuse. As such, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Accordingly, the individual's access authorization should not be restored.

The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: November 29, 2006