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December 1, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 27, 2005

Case Number: TSO-0237

This decision concerns the eligibility of XXXXX XXXX XXXXX, (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹

I. BACKGROUND

On October 25, 2003, the Individual was arrested for Driving While Intoxicated (DWI). The Individual reported this DWI to the Local Security Office (LSO). A review of the Individual's suitability to maintain an access authorization ensued. This review included consideration of information indicating that the October 25, 2003 DWI arrest was the Individual's seventh alcohol-related arrest since 1978. A personnel security interview (PSI) of the Individual was conducted on February 5, 2004.² This PSI failed to resolve the security concerns raised by the Individual's seven alcohol-related arrests.³ The Individual was then asked to submit to an examination by a DOE Psychiatrist. On August 24, 2004, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist administered a standardized psychological assessment test: the Minnesota

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The transcript of this PSI appears in the Record as DOE Exhibit 9.

³ On April 19, 1978, the Individual was arrested for disorderly conduct after consuming alcohol. The Individual was arrested for DWI on March 13, 1980, August 26, 1988, May 16, 1992, November 20, 1993, July 5, 2002 and October 23, 2003. Notification Letter at 1-2.

Multiphasic Personality Inventory, ordered several medical laboratory tests and reviewed selected portions of the Individual's security file. On August 31, 2004, the DOE Psychiatrist issued a report in which he stated that the Individual met the criteria for Alcohol Abuse, set forth in Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Exhibit 7 at 8. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his alcohol abuse.⁴ DOE Exhibit 7 at 10. The LSO accordingly concluded that the Individual failed to resolve the substantial doubts about his eligibility for a DOE access authorization raised by his alcohol abuse diagnosis and seven alcohol-related arrests. An administrative review proceeding was therefore initiated. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has

(1) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist . . . as suffering from alcohol abuse, 10 C.F.R. § 710.8(j) (Criterion J), and,

(2) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . . 10 C.F.R. § 710.8(l) (Criterion L).

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

At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented three witnesses: a co-worker (the Co-worker), his Employee Assistance Program (EAP) Counselor (the EAP Counselor) and his Alcoholic's Anonymous (AA) sponsor (the Sponsor). The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0237 (hereinafter cited as "Tr.").

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or

⁴ The DOE Psychiatrist opined that in order to establish *rehabilitation or reformation* from his Alcohol Abuse, the Individual must maintain total abstinence from the use of alcohol for two years, complete a two year program of outpatient treatment, and fully participate in an Alcoholics Anonymous (AA) Program for at least one year. DOE Exhibit 7 at 10.

unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

When the DOE issued the current version of Subpart A of the Part 710 regulations on September 11, 2001, it also published “Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968” (the Guidelines) as an Appendix to the regulations. The Guidelines explain the security concerns raised by the derogatory information described in the regulations at 10 C.F.R. § 710.8. 66 Fed. Reg. 47061, 47067 (September 11, 2001).⁵ The Guidelines state, in pertinent part,

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

DOE Adjudicative Guideline G. Accordingly, a reliable diagnosis of alcohol abuse raises significant security concerns under Criteria J and L. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, 25 DOE ¶ 82,755; *aff'd, Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these proceedings, it has been recognized that an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that an individual will fail to safeguard classified matter or special nuclear material.

In the present case, the Individual does not contest the DOE Psychiatrist's diagnosis of alcohol

⁵ Obviously, because these are guidelines, their application is not dispositive in any given case. Ultimately, the “decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of 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).

abuse. Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation and reformation to resolve the security concerns raised by his alcohol abuse. After considering all of the evidence in the record, I find that he has done so.

The DOE Guidelines set forth conditions under which security concerns may be mitigated. Specifically, the Guidelines state:

Conditions that could mitigate security concerns include: (a) The alcohol related incidents do not indicate a pattern; (b) The problem occurred a number of years ago and there is no indication of a recent problem; (c) Positive changes in behavior supportive of sobriety; (d) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

DOE Adjudicative Guideline G. By the time of the hearing, the Individual had taken a number of important steps in order to address his alcohol abuse. Specifically, the Individual has abstained from the use of alcohol for a period of 23 months, been meeting regularly with the EAP Counselor, entered into a recovery program sponsored by his employer, and actively participated in AA.

The Individual convincingly testified at the Hearing, that he had not consumed alcohol since he was arrested for DWI on October 25, 2003, almost two years prior to the Hearing. Tr. at 16-17. This testimony was supported by the testimony of his Co-worker, Counselor and Sponsor. Tr. at 8, 11, 45-47, and 75-76.

The Individual has been meeting with the EAP Counselor for one-half-hour to one-hour counseling sessions. Tr. at 73. These sessions originally occurred on a once or twice monthly basis but were eventually reduced to a monthly or bi-monthly basis because of the Individual's progress. Tr. at 73. The sessions with the EAP Counselor are intended to monitor the Individual's progress, compliance with the Recovery Agreement, and to monitor the Individual's mental health. Tr. at 73. The counseling sessions are also for the purpose assisting the Individual to develop "alternative coping strategies to deal with basic life problems without alcohol." Tr. at 73. The EAP Counselor testified that she believes that the Individual has been honest with her during his counseling sessions. Tr. at 76. The EAP Counselor testified that the Individual has been an active participant in his counseling and seems sincerely interested in maintaining his sobriety rather than merely going through the motions in order to protect his security clearance. Tr. at 78. The EAP Counselor testified that she believes that the Individual has been doing well with his recovery. Tr. at 77. To this end the EAP Counselor testified: "I feel that he is handling stresses and matters in his life pretty well. I think he is on track. He realizes he can't drink anymore, which is, of course, a very important mindset to have to continue in sobriety." Tr. at 77. The EAP Counselor also noted that the Individual has "a lot of

family support.” Tr. at 81. Finally, the EAP Counselor stated that she thought “his prognosis for continued sobriety looks pretty good.” Tr. at 81. I found the EAP Counselor’s testimony to be credible and entitled to great weight.

The Individual testified that he has entered into two one-year Recovery Agreements with his EAP designed to assist and coordinate his alcohol treatment. Tr. at 71. The first Recovery Agreement started in January 2004 and concluded in January 2005. Tr. at 74. The Individual voluntarily entered into a second one-year Recovery Agreement which began in January 2005. Tr. at 74; DOE Exhibit 7 at 5. Under these Recovery Agreements, the Individual has agreed to participate in the AA Program, meet regularly with an EAP Counselor, undergo regular drug and alcohol screening tests, and abstain from the use of alcohol. The Individual has submitted the results of these laboratory tests showing that he has consistently tested negative for alcohol and illegal drugs. Individual’s Exhibits 4 and 5. The Individual also submitted documentation of his conscientious and consistent attendance at AA meetings. Individual’s Exhibit 6.⁶ The Counselor testified that she was convinced that the Individual was abiding by the terms of these Recovery Agreements. Tr. at 75-76.

The Individual persuasively testified that he has been attending AA meetings on a weekly basis for two years. Tr. at 17 and 46. The Individual testified that he has purchased books and tapes on the AA’s Twelve-Step Program and is using them to work the Twelve Steps. Tr. at 24, 28, and 34. The Individual testified that he has a sponsor (the Sponsor testified, by telephone, at the Hearing). Tr. at 28, and 36-48. He added that he plans to stay with AA “as far as they go.” Tr. at 34. I interpreted this statement to indicate that he plans to continue with AA as long as he considered it to be useful.

After the Hearing, the Individual submitted copies of eight letters of recommendation from friends, family, coworkers and the EAP Counselor. His girlfriend’s letter indicates that she has been in a serious relationship with the Individual since 1997. That letter notes that the Individual realized he needed to quit drinking alcohol after receiving a DWI. In this letter, the Individual’s girlfriend states “I marvel at his willpower and being able to say ‘no,’ i.e. when he was offered a beer when we went hunting and fishing.” She further noted that the Individual is “serious about his life threatening situation.” Two of the Individual’s sisters wrote to state that the Individual no longer drinks alcohol at family functions. One of these sisters recounted the Individual’s refusal of offers of alcohol and the substitution of soft drinks and Gatorade for alcohol at social and family functions.

The DOE Psychiatrist remained in the hearing room during the Hearing to observe the testimony of the Individual and the other witnesses. The DOE Psychiatrist was called to the stand after the other four witnesses testified. The DOE Psychiatrist testified that, in his opinion, the Individual had not shown that he had been sufficiently reformed or rehabilitated. Tr. at 84. As an initial matter, the DOE Psychiatrist noted that he had originally recommended two years of abstinence

⁶ The Individual’s Exhibit 6 indicates that the Individual attended 81 AA meetings during the period beginning on February 10, 2004 and ending on September 13, 2005.

from alcohol use and two years of treatment. Tr. at 84-86. The DOE Psychiatrist noted that the Individual had only maintained 23 months of abstinence and 18 months of treatment (the DOE Psychiatrist considered the date in which the Individual had entered into the first Recovery Agreement to be the date on which his treatment began).⁷ The DOE Psychiatrist noted that he was concerned about the fact that the Individual had consumed alcohol while he was on probation after his fifth DWI arrest, in November 1993, and the fact that a breathalyzer test taken during his sixth DWI arrest indicated an extremely high blood alcohol concentration (.24).⁸ Tr. at 59.⁹ The DOE Psychiatrist further noted that, at the time of his examination, the Individual was in a high level of denial concerning the existence and severity of his alcohol abuse, even though he was complying with all of his treatment recommendations. Tr. at 60. The DOE Psychiatrist testified, apparently incorrectly, that the Recovery Agreements were a condition of his employment.¹⁰ Tr. at 61. The DOE Psychiatrist did note that it was a good sign that the Individual had complied with the Recovery Agreements and had voluntarily entered into a second Recovery Agreement. Tr. at 62. The DOE Psychiatrist also testified that he had no reason to believe that the Individual had not maintained his sobriety. Tr. at 62.

However, the DOE Psychiatrist testified that he believed that the Individual was still in denial. Tr. at 62, 64. As evidence for this contention, the DOE Psychiatrist cited a number of factors. First, even though the Individual was not contesting his Alcohol Abuse diagnosis, the DOE Psychiatrist noted that the Individual claimed that the DOE Psychiatrist's diagnosis was inconsistent with one of the criteria set forth in the DSM-IV-TR. Tr. at 62-63. Second, the DOE Psychiatrist noted that the Individual had referred to the information set forth in the Notification Letter as "DOE's accusations." Tr. at 63. Third, the DOE Psychiatrist claimed that the Individual did not know which of the 12 steps he was working on.¹¹ Tr. at 64. Fourth, the DOE Psychiatrist also correctly noted that the Individual had only been working with his present sponsor for about two weeks. Tr. at 65. Finally, the DOE Psychiatrist stated "I didn't get a strong impression that even today that [the Individual] thought he was an alcoholic, that he

⁷ At the time of the Hearing, the Individual had been undergoing treatment (as defined by the DOE Psychiatrist) for 21 and a half months. DOE Exhibit 7 (indicating that the Individual signed his first recovery agreement on January 5, 2004.

⁸ Prior to this testimony, the Individual had testified that the charges filed against him for this sixth DUI may be dropped because the Breathalyzer machine had not been properly calibrated. Tr. at 20.

⁹ The Individual's Exhibit 6 indicates that the Individual attended 81 AA meetings during the period beginning on February 10, 2004 and ending on September 13, 2005.

¹⁰ The Counselor later testified that the Individual was not required to enter into the Recovery Agreements as a condition of employment. Tr. at 75.

¹¹ The Transcript indicates that when asked which step he was on the Individual testified "I think I am on about the fourth." Tr. at 23.

thought he had a problem.” Tr. at 65. The DOE Psychiatrist further stated “The concerns I have today are he doesn’t seem to have a significant change in his denial with respect to does he think he’s got a problem. My hunch is, if he got his clearance back, he’d have another DWI within a year or two.” Tr. at 86.

I found certain aspects of the DOE Psychiatrist’s testimony to be perplexing.¹² At the time of the Hearing, the Individual was in substantial compliance with the treatment recommendations set forth by the DOE Psychiatrist in his Report. The Record shows that the Individual had been participating in AA for at least 18 months while the DOE Psychiatrist’s Report recommended one year’s participation. The Individual had been undergoing treatment for 21 and one half months, when the DOE Psychiatrist’s Report recommended 24 months of treatment. The Individual had, by all accounts, abstained from the use of alcohol for a period of 23 months, when the DOE Psychiatrist had recommended 24 months of abstinence.

The DOE Psychiatrist is convinced that the Individual is still in denial to some extent. Yet there is considerable evidence in the Record to the contrary. The EAP Counselor, who has been meeting regularly with the Individual for over a year, repeatedly testified that she believed that the Individual recognized his problem and is not in denial. Tr. at 76, 77, 78, and 80. Moreover, the Sponsor testified that he was convinced that the Individual was seriously committed to the AA program and his sobriety. Tr. at 40. To this end the Sponsor stated, “I run across a lot of people that are trying to get people off their back. [The Individual] doesn’t seem to be doing that. He seems to really want to do this thing, because he’s interested, and he is asking me questions about things in the book and what we should do and what he should do next.” Tr. at 43. The Sponsor further testified, “I know he’s recognized [his alcohol abuse], because I have talked with him about that, and he understood that part real well.” Tr. at 44. Most importantly, the Individual’s testimony, at the Hearing, convinced me that he fully and sincerely recognized that he has a problem with alcohol and cannot ever use alcohol again. The following excerpt from the Hearing Transcript is instructive, since it sets forth the testimony that the DOE Psychiatrist and I obviously interpret differently.

Q. (BY [the DOE Counsel]) Do you think you have a problem?

A. I didn't at first, but these AA meetings bring out a lot. You listen to a lot of stories. You listen to a lot of other people that have been going down your path. Sometimes you don't realize you did, you know, until you see where they have gone, and I think that is why I have been going to the meetings and all, to make sure that I stay off it and don't have a problem with it.

¹² It is obvious from the Record, that even though the Individual had entered into a Recovery Agreement and was attending AA meetings, he was in deep denial about his alcohol abuse in 2003, when he was initially examined by the DOE Psychiatrist. DOE Exhibit 7 at 11 (noting the DOE Psychiatrist’s observation that the Individual “still does not consider that he suffers from Alcohol Abuse, and in the Alcohol Anonymous program he has not yet begun working the 12 steps and has not yet obtained a sponsor).”

Q. One of the impressions that I got from reading [the DOE Psychiatrist's] report was that you were sort of in a denial phase. Would that be true?

A. I think that that is when I say that I didn't think I had a problem, because, you know, it's never been brought up like, "Hey, do you think you have a problem?" Just you automatically do it, but I think, more and more, it is a problem because of what brings me here. So I have been trying to do something about it, rehabilitation and doing all of this, and like AA teaches you the best thing to do is admit your problems and, yes.

Tr. at 19-20. After hearing the DOE Psychiatrist's testimony expressing his opinion that the Individual is in denial, the Individual responded by stating

I thought that I had cleared that up that I was, that I am, because I said that in the meetings that we do say that, that we are, and I did say that we had to admit before we get cured, which is saying that I am. In AA, when you are once an alcoholic, you are always an alcoholic, even if you quit. . . . But alcoholism is once you are an alcoholic, you are an alcoholic, and I am. That is my answer to you.

Tr. at 93. I am extremely hesitant to find in favor of an Individual who suffers from an alcohol related disorder when the DOE Psychiatrist is unwilling to conclude that the Individual has been sufficiently reformed or rehabilitated. However, in the present case, the DOE Psychiatrist's opinion is based largely upon his conclusion that the Individual is in denial. This conclusion is at odds with the opinion of the Counselor, who is much more familiar with the Individual after working with him for almost two years, the opinion of the Sponsor and my own impression and evaluation of the Individual's testimony.

After carefully weighing all of the evidence in the Record, I am convinced that the Individual recognizes that he suffers from alcohol abuse, and has provided sufficient evidence of reformation and rehabilitation. Accordingly, the risk that the Individual will return to alcohol use is acceptably low. The Individual has shown that he has been alcohol-free for almost two years. He has obtained counseling for his alcohol abuse and has joined and participated in AA.¹³ I therefore conclude that the Individual has resolved the security concerns raised by his diagnosis of Alcohol Abuse.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J and L. Therefore, the Individual has demonstrated that restoring his

¹³ The Individual's seven alcohol-related arrests have raised security concerns under Criterion L. I am of the opinion that these arrests were a symptom of the Individual's alcohol abuse. The Individual has resolved these security concerns, raised under Criterion L, by showing that he has established reformation and rehabilitation from his alcohol abuse.

security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: December 1, 2005