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November 7, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing  
Date of Filing: June 13, 2008  
Case Number: TSO-0639

This decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter referred to as "the Individual") to have his access authorization restored 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."<sup>1</sup> For the reasons set forth below, I conclude that the Individual's access authorization should not be restored.

**I. BACKGROUND**

On April 1, 2007, the Individual was arrested and charged with "Driving While Intoxicated" (DWI). The Individual had been arrested for DWI on at least one prior occasion: in August 1993. The record also contains disputed information indicating that the Individual may have been arrested for DWI on two other occasions: on December 8, 1989, and sometime in the 1970s. In addition, the Individual had submitted two Questionnaires for National Security Positions (QNSP) on February 18, 2005, and on April 4, 2002, in which he had failed to list the DWIs he was allegedly charged with in 1989 and the 1970s. Moreover, the Individual provided the Local Security Office (LSO) with conflicting accounts of his involvement with marijuana. Accordingly, the LSO conducted a Personnel Security Interview (PSI) of the Individual on January 7, 2008.<sup>2</sup> When the PSI failed to resolve the security concerns raised by this information, the LSO asked the Individual to submit to an examination by a DOE Psychiatrist.

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<sup>1</sup> 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.

<sup>2</sup> The transcript of this PSI appears in the record as DOE Exhibit 5. In addition, the record contains the transcript of a PSI conducted on December 18, 2002. The December 18, 2002, PSI Transcript appears in the record as DOE Exhibit 6.

On February 26, 2008, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. The DOE Psychiatrist also reviewed selected portions of the Individual's security file. On February 28, 2008, 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, Fourth Edition-Text Revised (DSM-IV-TR). DOE Exhibit 3 at 7-9. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed from his alcohol abuse. *Id.* at 9.<sup>3</sup>

The LSO subsequently concluded that the Individual failed to resolve the substantial doubts about his eligibility for a DOE access authorization raised by his alcohol abuse diagnosis, failure to provide accurate information about his arrest record, and failure to provide accurate information about his involvement with marijuana. Accordingly, the LSO initiated an administrative review proceeding. *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).<sup>4</sup> 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 no witnesses. However, the Individual testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0639 (hereinafter cited as "Tr.").

## II. STANDARD OF REVIEW

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<sup>3</sup> The DOE Psychiatrist opined that in order to establish rehabilitation or reformation from his alcohol abuse, the Individual must undergo outpatient treatment of at least moderate intensity. The treatment program should include abstinence from alcohol and be of at least one year's duration. DOE Psychiatrist's Report of Examination at 9.

<sup>4</sup> Specifically, the Notification letter alleges that the Individual has:

(1) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, . . . on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31, 10 C.F.R. § 710.8(f) (Criterion F);

(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); and

(3) Been, 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) (Criterion J).

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 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 decision: 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 FACT AND CONCLUSIONS OF LAW**

#### **A. Background**

##### **April 4, 2002, QNSP**

On April 4, 2002, the Individual submitted a QNSP to the LSO.<sup>5</sup> In this QNSP, the Individual was required to list any arrests or convictions for offenses related to alcohol or drugs. The Individual identified only one such offense, his August 1993 arrest for DWI. DOE Exhibit 8 at 7. The Individual was also required to list any illegal drugs he had used during the previous seven years. The Individual indicated that he had used marijuana five times between August and November 1993. *Id.* at 8.

##### **December 18, 2002, PSI**

During the December 18, 2002, PSI, the Individual discussed his August 1993 arrest for DWI<sup>6</sup> and was asked if he had any other alcohol-related incidents. The Individual responded in the affirmative, indicating that he had an alcohol-related car accident sometime in the late 1970s. DOE Exhibit 6 at 12-14. The Individual recalled being arrested as a result of that incident and said that he thought he was charged with DWI or Driving Under the Influence of Alcohol (DUI). *Id.* at 14-18. The Individual then stated that he did not have any additional alcohol-related incidents. *Id.* at 18. During this PSI, the Individual indicated that he no longer used alcohol and had not used alcohol for the preceding eight years. *Id.* at 30-34. The Individual admitted using marijuana five or six times in 1993. *Id.* at 34-37. The Individual denied he had ever cultivated marijuana. *Id.* at 37.

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<sup>5</sup> The April 4, 2002, QNSP appears in the record as DOE Exhibit 8.

<sup>6</sup> The transcript of the December 18, 2002, PSI appears in the record as DOE Exhibit 6.

**February 18, 2005, QNSP**

The Individual submitted a QNSP to the LSO on February 18, 2005.<sup>7</sup> In this QNSP, the Individual was required to list every time he had been charged or convicted with an offense related to alcohol or drugs. The Individual identified only one such offense, his August 1993 arrest for DWI. DOE Exhibit 7 at 7.

**January 7, 2008, PSI**

On April 1, 2007, the Individual was arrested and charged with DWI. DOE Exhibit 9. During the January 7, 2008, PSI, the Individual discussed his April 1, 2007, arrest for DWI.<sup>8</sup> The Individual claimed that he was sleeping in his car on the side of the road when he was arrested. He admitted he had consumed alcohol prior to this arrest, but attributed his need to sleep to his diabetes. DOE Exhibit 5 at 6, 11. The Individual stated that he quit drinking alcohol completely when his son was born in 1984. *Id.* at 42-43. The Individual stated that, after 1984, he did not drink alcohol until April 1, 2007, the night he was arrested for DWI. *Id.* at 44. The Individual was then asked if he had been arrested for DWI in 1993. The Individual stated he could not remember. *Id.* When he was subsequently reminded that he had reported a 1993 DWI in his QNSPs, the Individual answered “oh yeah, yeah.” *Id.* at 45. The Individual then claimed he could not remember his December 18, 2002, PSI. *Id.* The Individual then admitted that he had consumed a beer since his April 1, 2007, DWI arrest. *Id.* The Individual then described his alcohol use between 1984 and 1993 as one to two beers, once a month. *Id.* at 47. He subsequently stated he consumed three to five beers at a time, every two or three months. *Id.* at 49. The Individual then claimed he had not used any alcohol from 1993 until 2005. *Id.* at 50. Yet, he subsequently stated he used one to four beers at a time during the period starting in 1993 and continuing through 1998. *Id.* at 50-51. The Individual stated that while he would continue to have a beer from time to time, he would never drink to intoxication again or when driving. *Id.* at 66-67. The Individual recalled telling an Office of Personnel Management (OPM) investigator in 2005 that he would never use alcohol again. *Id.* at 70-71. The Individual stated that he intended to abstain from alcohol use in the future. *Id.* at 72. The Individual could not recall being arrested for DWI in the 1970s. *Id.* at 80-81, 98. When the Individual was asked whether he had ever used marijuana, he indicated that he may have done so in the 1970s, when he was in high school. *Id.* at 84. The Individual could not recall being arrested for DWI in 1989. *Id.* at 76-77. The Individual could not recall using marijuana in 1993 as he had disclosed on the April 4, 2002, QNSP and during the December 18, 2002, PSI. *Id.* at 86-87.

**The February 26, 2006 Psychiatric Examination**

The DOE Psychiatrist reported that, during this psychiatric examination, the Individual informed him that he was arrested for DWI in 1974 or 1975. DOE Exhibit 3 at 2. The Individual also told the DOE Psychiatrist that he stopped drinking in 1984, after his son’s birth, and did not drink

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<sup>7</sup> The February 18, 2005, QNSP appears in the record as DOE Exhibit 7.

<sup>8</sup> The transcript of the January 7, 2008, PSI appears in the record as DOE Exhibit 5.

again until April 2007. *Id.* at 2-3. The Individual could not recall being arrested for DWI in 1989. *Id.* at 3.

The DOE Psychiatrist's Report states:

On December 8, 1989, when he was about 23 years old, [the Individual] was arrested for his second DWI. . . . In his PSI 1/7/08, he was informed that FBI records show that he had a DWI arrest . . . on this date. However, [the Individual] said that he did not remember any such DWI arrest.

*Id.* at 3.

## **B. Analysis**

### **1. Criterion F**

The Notification Letter notes that the Individual omitted the 1989 and 1970s DWIs from two QNSPs that he submitted on April 4, 2002, and February 18, 2005. DOE Exhibits 7 and 8; Statement of Charges at I.A. The Notification Letter also alleges that the Individual has provided conflicting accounts of his marijuana use and his involvement in marijuana cultivation during two investigations of his eligibility to maintain a DOE security clearance. Statement of Charges at I.B. Under the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines), "deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire . . . or similar form . . . used to conduct investigations . . . [or] determine security clearance eligibility or trustworthiness, [or] deliberately providing false or misleading information concerning relevant facts to an . . . investigator, security official . . . or other official government representative" constitute "conditions that could raise a security concern" and may disqualify an Individual from maintaining a DOE security clearance. Revised Guideline E at Paragraphs 16(a) and (b).

On his April 4, 2002, QNSP, the Individual stated that had used marijuana five times between August and November 1993. DOE Exhibit 8 at 8. During the December 18, 2002, PSI the Individual indicated that his use of marijuana was limited to five or six occasions and "probably" occurred in 1993. DOE Exhibit 6 at 34-36. Six years later, during his January 7, 2008, PSI, he was asked whether he had used marijuana. The Individual responded by stating "Maybe when I was younger, but I don't remember." DOE Exhibit 5 at 82. The Individual was then asked if he could remember when he used marijuana. The Individual responded by stating "Maybe in high school." *Id.* at 84. (The Individual graduated from high school in the 1970s). The Individual further stated that he could not remember any specifics about his marijuana use. *Id.* at 87-88.

During the December 18, 2002, PSI, the Individual denied that he had ever grown marijuana. *Id.* at 37. During the January 7, 2008, PSI, the Individual initially denied growing marijuana and then indicated that he "didn't think" he had grown marijuana. *Id.* at 88-89. After further questioning, the Individual agreed with his interviewer that it was "possible" that he had grown

marijuana, stating “Maybe, maybe. But I don’t remember, I mean, like you said, if you grew it, you probably would remember it, but I, I don’t know, I, I don’t remember.” *Id.* at 89.

While the Notification Letter alleges that the Individual “admitted using marijuana in [the 1970s] and might have used and grown marijuana in the 1980s,” I find that the responses provided by the Individual during the January 7, 2008, PSI are too equivocal to be considered admissions. Statement of Charges at I.B. As documented both above and below, during the present proceeding the Individual has consistently provided contradictory and difficult-to-believe information. These inconsistent, contradictory and difficult-to-believe accounts have raised significant concerns about his credibility and that the Individual’s memory failures may constitute an intentional strategy of deception.

The Notification Letter states that the Individual omitted the 1989 and 1970s DWIs from two QNSPs that he submitted on April 4, 2002, and February 18, 2005. DOE Exhibits 7 and 8; Statement of Charges at I.A. At the hearing, the Individual explained these omissions by asserting that he had not been arrested for DWI in 1989 and in the 1970s. Transcript of Hearing (Tr.) at 10. The Individual testified that the 1970s DWI “probably wasn’t a DWI. It was probably for driving with a suspended license.” *Id.* The Individual then explained that, during his PSIs, he stated that he had been arrested for DWI in the 1970s because “I thought maybe that [the LSO] found something.” *Id.* Moments later, the Individual testified that he had actually reported the DWI that occurred in 1989, but had incorrectly indicated that the 1989 DWI had occurred in 1993. *Id.* The Individual then claimed that he had only been arrested for DWI on two occasions: on April 1, 2007, and in 1989. *Id.* at 11, 15. The conflicting accounts concerning both arrests provided by the Individual at different times during the hearing render his assertion that he was not arrested for DWI in the 1970s difficult to believe. Moreover, his assertions that he merely reported the wrong date for the 1989 DWI on two QNSPs clearly lack credibility. Accordingly, the foregoing indicates that the LSO properly invoked Criterion F.

At the hearing, the Individual failed to mitigate the Criterion F security concerns. The Revised Guidelines list the following conditions that could mitigate security concerns raised by falsification:

The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; . . . the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness or good judgment; [or] the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Revised Guidelines at Paragraphs 17(a), (c), and (d). In the present case, the Individual has, throughout the present proceeding, continued to deceive DOE Security officials, as I have documented above in the background section, by repeatedly changing his stories. Moreover, the

Individual's falsehoods did not come to the LSO's attention through the efforts of the Individual, but rather were detected through the LSO's investigation. Nor can the Individual's apparent attempts to conceal DWI arrests and marijuana cultivation be considered minor or infrequent in nature. Most importantly, since the Individual's attempts to deceive continued into the hearing itself, it is clear that the Individual has not changed his behavior or taken other positive steps to alleviate the security concerns which called his trustworthiness and reliability into question. Accordingly, I find that the security concerns set forth in the Notification Letter under Criterion F have not been sufficiently mitigated.

## 2. Criterion J

A reliable diagnosis of alcohol abuse raises significant security concerns under Criterion J. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs*, The White House (December 29, 2005) (*Revised Guidelines*) Guideline G at 10.

In the present case, it is not clear whether the Individual disputes the DOE Psychiatrist's diagnosis of alcohol abuse. At the hearing, the Individual was asked whether he agreed or disagreed with the DOE Psychiatrist's diagnosis of alcohol abuse. The Individual responded by stating:

I haven't drank since last year in August when I drank that one beer, and I didn't even drink a beer, I kind of rinsed out my mouth with it, and then I did take a drink, but like I said, we were baling hay, and I was dusty, but I didn't even drink the whole beer. I kind of rinsed my mouth out with it and – but he's the doctor. I mean, if he thinks I got a problem with it, he's the doctor, I mean.

Tr. at 14. The Individual then suggested that the DOE Psychiatrist's diagnosis was unreliable because it was based on the assumption that the Individual had been arrested for DWI on four occasions. *Id.* at 17, 39. He also testified that he did not believe that he had a problem with alcohol. *Id.* at 23-24.

The DOE Psychiatrist testified that he had diagnosed the Individual with alcohol abuse. Tr. at 40. Specifically, the DOE Psychiatrist testified that the Individual recurrently used alcohol in situations in which it was physically hazardous, had experienced occupational problems because of alcohol and had experienced recurrent alcohol-related legal problems, as evidenced by the Individual's multiple DWI arrests. *Id.* at 41-47. The DOE Psychiatrist twice testified that even if the Individual had been arrested for DWI on only two occasions instead of four, he still would have diagnosed the Individual with alcohol abuse. *Id.* at 33, 40.

The DOE Psychiatrist testified that the Individual had neither shown rehabilitation nor reformation of his alcohol use, since he did not acknowledge that he had a problem with alcohol, did not obtain treatment for his alcohol abuse, and most likely continues to use alcohol. Tr. at

47- 51. The DOE Psychiatrist testified that, in his opinion, the Individual's future prognosis was "not good." *Id.* at 49-50.

I am persuaded by the DOE Psychiatrist's testimony that the Individual has been properly diagnosed with alcohol abuse and that the Individual has not been reformed or rehabilitated from his alcohol use. The Individual has not provided any expert opinion to the contrary. In addition, I do not find the Individual's assertions that he has stopped drinking to be credible. Finally, the Individual provided no evidence that he attended any kind of alcohol treatment program, as recommended by the DOE Psychologist. I therefore find that he has not demonstrated rehabilitation or reformation from his alcohol abuse. Accordingly, I find that he has not resolved the security concerns raised under Criterion J.

### 3. Criterion L

The Notification Letter states:

On March 26, 2002 and February 18, 2005, [the Individual] signed and dated DOE Security Acknowledgements certifying he understood that using alcohol habitually to excess or a diagnosis of Alcohol Abuse by a board certified psychiatrist could result in the loss of his DOE access authorization. Despite these certifications, he was diagnosed by a DOE-consultant psychiatrist on February 26, 2008 as suffering from Alcohol Abuse.

Statement of Charges at III.A. The Notification Letter further states:

During a personal interview conducted on June 16, 2005, he told an OPM Investigator he had no intentions of drinking and driving or consuming alcohol in the future. Despite his stated intention, he admitted drinking seven or eight beers on the day he was arrested and charged with DWI on April 1, 2007 and drank a beer after that arrest.

Statement of Charges at III.B. In the present case, the Individual's excessive drinking was clearly a symptom of a mental disorder: alcohol abuse, and was, in the highly persuasive opinion of the DOE Psychiatrist, beyond the Individual's control. Tr. at 36-37, 53. The fact that the Individual was (for a number of reasons) clearly on notice that excessive drinking might jeopardize his ability to hold a DOE security clearance does not raise any additional security concerns that have not already been addressed under Criterion J in the present case. Had the Individual, in this proceeding, shown that he had been reformed or rehabilitated from his alcohol abuse, he would have mitigated the security concerns raised in Paragraph III.A as well.

Nor does the Individual's statement to an OPM Investigator that he intended to refrain from future drinking and driving constitute unusual conduct or a circumstance which tends to show that the Individual is not honest. As the DOE Psychiatrist testified: "As a clinician . . . my hunch is that [when the Individual told the OPM Investigator he intended to refrain from using alcohol, he] was telling the truth when [he] reassured them, but alcohol is tough to manage." Tr. at 36.

However, the Individual's apparent inability to refrain from drinking and driving is evidence of his unreliability and untrustworthiness. Since it is clear that such unreliability is a symptom of his alcohol disorder, it does not raise any additional security concerns that have not already been addressed under Criterion J in the present case. Had the Individual, in this proceeding, shown that he had been reformed or rehabilitated from his alcohol abuse, he would have mitigated the security concerns raised in Paragraph III.B as well.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria F, J and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. 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 L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: November 7, 2008