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January 23, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 18, 2008

Case Number: TSO-0644

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 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 granted.

I. Background

The individual has held a "Q" clearance for four years. In July 2003, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address various issues, including the illegal use of prescribed medication and his overdose on Oxycontin in August 2001. In addition to the PSI, the LSO requested the individual's medical records and recommended a psychiatric evaluation of the individual. The LSO referred the individual to a DOE psychologist for a forensic psychological evaluation in February 2004. However, at that time the individual was not diagnosed with a condition which causes or may cause a significant defect in his judgment and reliability. In March 2004, the individual signed a DOE Drug Certification and was granted a "Q" clearance.

In March 2006, based on the individual's Human Reliability Program (HRP) review, the DOE issued a Letter of Interrogatory (LOI) to the individual to obtain clarification regarding his use of drugs.

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

2/The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. See 10 C.F.R. § 712.1. Among the numerous requirements for
(continued...)

2/ After resolving the drug use concern, the individual continued the HRP processing. However, in March 2007, after receiving various incident reports reflecting concerns involving the individual's use of opioids and after the individual had been on medical restriction for over 90 days, DOE terminated the individual's clearance.

In April 2007, the individual's employer submitted a request for reinstatement of the individual's "Q" clearance. For purposes of this proceeding, the individual is treated as an applicant for an access authorization. Information revealed during a background investigation prompted the LSO to conduct two additional PSIs in July and October 2007. As a result of the PSIs and the revelation of the individual's resumption of opioid usage, the LSO referred the individual to a DOE psychologist to conduct a second forensic psychological examination. The DOE psychologist examined the individual in November 2007, and memorialized his findings in a report (Psychological Report or Exhibit (Ex.) 16). In the Psychological Report, the DOE psychologist opined that the individual met the criteria for Substance Dependence (Opioid) and Pain Disorder Associated with both Psychological Factors and a Genuine Medical Condition as well as Chronic and Personality Disorder Traits. The DOE psychologist further opined that the individual has an illness or mental condition which causes, or may cause, a significant defect in judgment and reliability.

In May 2008, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of four potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f)(h)(k) and (l) (hereinafter referred to as Criteria F, H, K and L, respectively). 3/

2/ (. . . continued)

participation in the HRP are the following: a level "Q" DOE security clearance, a psychological evaluation, initial and random drug and alcohol tests and successful completion of a counterintelligence evaluation, including a counterintelligence-scope polygraph examination. See 10 C.F.R. § 712.11 (1), (7), (8), (9) and (10).

3/ Criterion F concerns information that the individual has "misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive Positions, Personnel Qualifications Statement, a Personnel Security Interview, written or oral statements made in response to an official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization. . . ." 10 C.F.R. § 710.8(f). Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion K concerns information that a person has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8 (k). Criterion L relates, in relevant part, to information that a person has "[e]ngaged 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).

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychologist. The individual called seven witnesses, including a staff psychologist, two employees of the individual's Aftercare program, his supervisor, a co-worker, a friend/sponsor and his wife. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

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

B. Basis for the Hearing Officer's Decision

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

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites four potentially disqualifying criteria as bases for denying the individual's security clearance, Criteria F, H, K and L. To support its reliance on Criterion F, the

LSO relies on information in its possession that the individual, on numerous occasions from 2000 to 2007, provided inconsistent and discrepant information regarding his use of narcotics and failed to inform all of his health care providers of his previous diagnosis of Opioid Dependence. The LSO also relies on information in its possession that the individual provided false or misleading information concerning his medical care and use of narcotics to his employer's security personnel and to the DOE psychologist.

From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See* Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House.

To support Criteria H and K, the LSO relies on the DOE psychologist's opinion that the individual suffers from Substance Dependence (Opioid) and Pain Disorder, mental conditions which cause, or may cause, a defect in the individual's judgment or reliability. In his psychological report, the DOE psychologist further noted that the individual has continued to misuse prescribed narcotic medication knowing he has an opioid addiction and has engaged in drug-seeking behavior with physicians and non-compliance with a treating physician. The LSO also relies on the DOE psychologist's opinion to support Criterion K in this case, and the following information: (1) in August 2001, the individual was admitted to a hospital for a drug overdose after taking Opium, Mepergan, Oxycontin, Klonopin, Percocet, Celexa and OxyIR at excessive levels because he wanted to have 'one last fling.' He was diagnosed with Opioid Dependence, Sedative Abuse, and Mood Disorder, Not Otherwise Specified. Also, during his intake evaluation at the time of his hospitalization for drug overdose in 2001, the individual admitted to using opium that morning and he reported having thoughts of killing people; (2) during his 2007 psychological evaluation, the individual admitted that his neurosurgeon advised him to discontinue use of Percocet pain medication because his pain condition was improving. However, the individual admitted taking both Percocet and Ultram, narcotic pain medications, on his own; (3) in August 2007, at the request of a staff psychologist, a neuropsychiatrist conducted an independent medical evaluation and concluded that the individual suffers from Mixed Pain Disorder, with both Anatomic and Psychogenic Components, History of Opiate and Polysubstance Dependence and Abuse, and Mixed Personality Disorder with Schizotype, Obsessive Compulsive and Antisocial Traits; (4) in December 2006, a staff psychologist temporarily restricted the individual from work requiring access authorization pending an evaluation of the individual's resumed use of Hydrocodone (an Opioid) in late 2005 in light of the fact that the individual had completed inpatient detoxification for Opioid Dependence in 2001; (5) the individual admitted he was addicted to narcotic pain medications including Oxycontin since 1999, taking up to 400 milligrams a day for a six-month period in 2001; (6) in 2001, one of the individual's treating physicians discharged the individual and refused to continue treatment because the individual violated his narcotic contract; (7) the individual illegally used his mother's Xanax and Percocet two to three times in November 1999, Klonopin four to five times, and Ambien; (8) the individual admitted to using marijuana 10 to 15 times and purchasing marijuana two to three times from 1992 to 2001 and (9) in February

1998, while in the military, the individual took Valium (provided by his girlfriend) knowing that it was against the law, overdosed, and was hospitalized. In addition, the individual was discharged from the Navy under Other than Honorable Conditions due to misconduct for the use of marijuana. *See* Statement of Charges at 1-4.

There are significant security concerns associated with Criteria H and K. First, a mental condition such as Substance Dependence (Opioid) can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, engaging in criminal conduct can raise questions about a person's ability or willingness to comply with laws, rules, and regulations. Also, illegal drugs can impair a person's judgment which, in turn, can raise questions about the person's reliability and trustworthiness. *See id.* at Guideline H.

As for Criterion L, the LSO alleges that in March 2004, the individual signed a DOE Drug Certification that he would not use or be involved with illegal drugs while in the possession of a DOE security clearance. Despite this certification, in November 2007, the DOE psychologist diagnosed the individual as opioid dependent. In addition, in October 2002 and March 2007, the individual signed DOE Security Acknowledgments certifying that he understood that the use of any controlled substances, except as prescribed by a licensed physician and a diagnosis of an illness or mental condition, could result in the loss of his DOE access authorization. Despite these certifications, the individual admitted that he may have violated the agreements by misusing narcotic medication. The individual's use of illegal drugs in express contravention of DOE's policy against using illegal substances in all situations, especially while holding a security clearance, calls into question the individual's judgment, reliability, trustworthiness and his ability to protect classified information. *See id.* at Guideline E.

IV. Findings of Fact

The individual began using illegal drugs (i.e., marijuana) when he was about 17 years old. He admits to smoking marijuana approximately 10 to 15 times during the course of his life, with his last use occurring about five or six years ago at the age of 24. In February 1998, while in the military, the individual took five to six Valium pills provided by his girlfriend. The individual, despite knowing that it was illegal, admitted to taking the Valium and overdosing on it. He was subsequently hospitalized. While in the hospital, the individual tested positive for marijuana. He was later discharged from the military under Other than Honorable Conditions due to his use of marijuana.

The individual has been employed by DOE for about seven years. He has had a "Q" clearance for four years. The central issue in this case revolves around the individual's use of prescribed and non-prescribed narcotic pain relievers for a number of years. According to the individual, in 1999, he developed back pain when he worked for a boat manufacturing plant. He consulted a doctor who prescribed Oxycontin and reports that he became chemically dependent on it. The individual states that he unsuccessfully tried to stop using Oxycontin. From 1999 to 2001, he was prescribed various

narcotics such as Percocet and Oxycontin for treatment of back pain. In addition, he has seen various physicians regarding his concerns of pain and insomnia.

On August 2, 2001, the individual was admitted into a hospital for a self-reported overdose of a variety of prescription and non-prescription drugs, including Opium, Oxycontin, Percocet, and Klonopin. ^{4/} According to the hospital's medical records, during an intake evaluation, the individual reported having thoughts of killing people. He was subsequently admitted to the hospital's psychiatric unit for detoxification. At the time of the individual's hospitalization, the individual's drug screen tested positive for opiates only. After his detoxification program, the individual was discharged with psychiatric diagnoses of Opioid Dependence, Sedative Abuse and Mood Disorder. He was referred to Narcotics Anonymous and for a psychiatric follow-up. According to the individual, he met with a psychiatrist on one occasion and attended two NA meetings, but did not continue. Since the individual was discharged from his detoxification program in 2001, he has not been prescribed narcotics. However, on at least two occasions, the individual has requested Percocet and Tylenol #3 for pain, but no medicine was prescribed on either occasion.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). ^{5/} After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Substance Dependence (Opioid) - Criteria H and K

The individual did not dispute that he suffers from Substance Dependence under the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text revised (DSM-IV-TR). The pivotal question before me, therefore, is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his condition.

^{4/} However, during the hearing, the individual stated that he only overdosed on Oxycontin.

^{5/} Those factors include the following: 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 at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

B. Rehabilitation and Reformation from Substance Dependence

1. The Individual's Testimony

At the hearing, the individual described his past as “troubled,” with difficult teenage years. Transcript of Hearing (Tr.) at 149. He testified that while growing up, he was exposed to a lot of prescription drugs in his house. *Id.* at 150. The individual explained that his mother was a nurse who was addicted to Oxycontin. *Id.* He further explained that, at the age of 25, his mother recommended that he use Oxycontin for pain. *Id.* The individual testified that he did not think the advice was unusual because of his mother's profession. *Id.* He also stated that his mother told him that Oxycontin was not an addictive medication. *Id.* at 151. The individual described his mother as an emotionally disturbed woman who was diagnosed with Multiple Personality Disorder, and stated that he is currently working on issues related to his mother with a psychiatrist. *Id.* He stated that after his 2001 overdose and detoxification, he attended a few NA meetings but did not continue because he had stopped using Oxycontin and did not have “the urge” for prescription medication. *Id.* at 152. He further stated that, at the time of his 2001 hospitalization, he did not accept that he was an “addict” and explained that after his hospitalization until the time he injured his back in 2007, he only used pain medication once for a cracked tooth. *Id.* at 153. However, he testified that had he seen the DOE psychologist's 2004 Psychological Report, he would not have taken any kind of pain medication. *Id.* at 155.

The individual testified that the only other time he has taken narcotic medication was when he injured his neck in 2005 and was in “crippling pain.” He explained that his doctor wrote him a prescription for Percocet to treat the pain. *Id.* at 159. He further explained that, because he was a candidate for HRP, he disclosed the prescription and was told it was not a problem. *Id.* at 159. The individual stated that he took the Percocet for a short period of time and discontinued. He stated his neck pain has greatly improved by the use of traction and the passage of time. *Id.* The individual stated that if his pain increased he would not use a narcotic medication, but would rather have surgery or use a non-narcotic medication. *Id.* at 160.

The individual testified that he was defensive when he read the DOE Psychologist's 2007 Psychological Report and admits that he was in denial about his addiction. *Id.* at 156. He stated that he now realizes that once you have a drug overdose, you should never take any type of narcotic medication. *Id.* The individual further testified that he understands now that drugs are a legitimate problem for him and it is no longer hard to say that he is an addict. *Id.* at 162. He stated that he has no intention of using a narcotic medication in the future and added that he has the support of his family and his doctors. *Id.*

With respect to the DOE's concerns that he provided inconsistent and discrepant information regarding his use of narcotics, the individual testified that he did not intentionally lie to doctors about his narcotic use and his 2001 overdose, but admitted that he was probably in denial about his addiction when discussing narcotic use with various doctors. *Id.* at 158. In addition, the individual disputed a great deal of information referenced in his medical records and cited by the LSO as

potentially disqualifying material. According to the individual, at the time of his 2001 hospitalization, he had overdosed only on Oxycontin and not on various other narcotics as listed by the LSO. *Id.* at 177. In addition, he disputes the amount of Oxycontin taken, and stated that he never took Klonopin. He also says he had no homicidal tendencies or thoughts and never would have said that he had thoughts of killing people. *Id.* at 185-186. The individual states that he is puzzled as to how the disputed information got into his medical records, but suggests that his mother could have provided false information during an intake evaluation in 2001. *See Ex. 19.*

2. Testimony of Aftercare Employees and Individual's Supervisor

The individual presented the testimony of two employees (Employees # 1 and #2) who work at the aftercare facility that the individual attends. The aftercare program provides positive peer-support groups for individuals suffering from alcoholism and addiction issues. Employee #1 has been a group facilitator in the aftercare program for nine years. *Tr.* at 12. He testified that the individual entered the program as an outpatient transfer after his detoxification and has been a conscientious, active participant. *Id.* at 13. Employee #1 further testified that he meets with the employee one hour per week and that the individual has shown significant progress over the last year. *Id.* He noted that the individual reached a "turning point" in his recovery efforts about six months ago, and noted that this is when the employee recognized he had a problem. *Id.* at 27. According to Employee #1, the individual understands that he has an addiction problem and has his problem under control (what he refers to as "stage three" of recovery). *Id.* He believes the individual intends to continue the program. *Id.* at 14. Employee #1 believes the individual should also join Narcotics Anonymous so that he will be around other recovering addicts. *Id.* at 33. Employee #2 is responsible for compiling records on sobriety rates and oversees the facilitators of the aftercare program. *Id.* at 36. He testified that he met the individual shortly after he started the aftercare program and believes the individual is doing well and following his recommendations. Employee #2 further testified that the individual appears to be dedicated to the program and has accepted that he is an addict.

The individual's supervisor testified that the individual is a very knowledgeable employee who has a high energy level. *Id.* at 51. He further testified that the individual is trustworthy and uses good judgement. The supervisor noted that he trusted the individual enough to sponsor him through HRP. *Id.* He further testified that he was aware of the individual's overdose on Oxycontin, but stated that he has never had any concerns that the individual was using drugs at work. *Id.* at 60.

3. Testimony of Wife, Co-worker and Friend

The individual's wife testified that she has been married to the individual since 2003. She stated that the individual discussed his August 2001 overdose and hospitalization with her. *Id.* at 94. The wife testified that from the time the couple started dating (in 2001) until the time they were married, the individual did not use prescription drugs of any kind. *Id.* at 95. The wife discussed the impact the individual's mother had on him. She described the individual's mother as a troubled woman and referred to a note his mother wrote discussing various medications the individual had taken, which was entered into the individual's medical records during his hospitalization. *See Ex. 19.* The wife testified that she believed the individual's mother lied about the various medications the individual

took because she was deeply troubled. *Id.* at 100. She further testified that the individual told her that he had not taken medications other than Oxycontin. The wife reiterated that she believed the individual's medical records were inaccurate. *Id.* at 101. She confirmed that the individual used the prescription Percocet for his 2005 neck injury and that he had checked with his employer prior to having his prescription filled. *Id.* at 103. She further testified that the individual has utilized traction therapy for his neck, no longer has a problem with pain and has no intention of using any prescription narcotic. *Id.* at 104. The wife further testified that the individual's attitude has changed since his 2001 hospitalization. *Id.* at 106. According to her, the individual now accepts his addiction and is serious about continuing his aftercare. *Id.* at 113, 115. She also testified that the individual has a good support system, including his family, his aftercare team and his doctors. *Id.* at 109. The wife stated that there are no prescription medications in the house and added that the individual now uses over-the-counter Advil or Ibuprofen for any pain he has. *Id.* at 138, 142.

The individual's friend and NA sponsor testified that he believes that the individual has accepted his addiction issues and is working on them. *Id.* at 80. He further testified that he attends aftercare meetings with the individual and is available to the individual if he needs help with his addiction issues. *Id.* at 82. The individual's co-worker testified that he has known the individual for about six years. *Id.* at 69. He described the individual as a good, honest and responsible worker who makes good decisions. *Id.* The co-worker testified that he socializes with the individual and further stated that he has never noticed anything that would suggest that the individual was using drugs. *Id.* at 70.

4. The Testimony of the Staff Psychologist

The staff psychologist testified that he has worked for DOE for about seven years. He stated that he is primarily responsible for helping to establish which employees are psychologically and emotionally fit for duty and helping employees to maintain their fitness. *Id.* at 224. The staff psychologist testified that when he first met the individual about a one and half years ago, the individual was angry, frustrated and in "a lot of denial." *Id.* at 229. He stated that this denial could have played a role when the individual provided misinformation to various doctors. *Id.* The staff psychologist further testified that he referred the individual to an alcohol and drug specialist in October 2007 who, based on the individual's history, believed the individual needed to participate in at least an intensive outpatient program (IOP). *Id.* at 230. The individual was admitted into an IOP in January 2008 and discharged in March 2008. The staff psychologist believed that at that time the individual did not completely "buy in" to his addiction, but was nevertheless complying with his program. According to the staff psychologist's records, the individual last took a prescription pain medication in November 2007 (which is consistent with what the individual reported during the hearing). The staff psychologist testified that when he met with the individual in May, he thought he was less angry, but still did not accept that he is an addict and needed treatment. *Id.* at 231.

The staff psychologist testified that the individual noticeably handled himself well during the hearing and believes that he has made significant progress. He believes that the individual understands now that he is an addict. *Id.* at 232. After listening to the testimony during the hearing, the staff psychologist stated that the individual is now in the active stage of treatment/recovery which began about three months ago and that he would like to see the individual in a recovery process for at least

a year. *Id.* at 233. He noted that the treatment process for individuals with addiction issues involves the components in which the individual now engages, which are one-on-one meetings with a mental health professional who has experience with chemical dependence as well as involvement in a 12-step program (such as NA). *Id.* at 234.

Finally, the staff psychologist testified that he agrees that the individual's mother and her troubled life played a significant role in his addiction issues. *Id.* at 235. However, he believes the individual has a very good prognosis. With respect to the issue regarding the individual's honesty, trustworthiness and reliability, the staff psychologist testified that he views the individual's mistruths or partial truths as related to the individual's addiction, and does not believe the individual consciously lied. *Id.* at 240.

5. The DOE Psychologist's Testimony and Report

The DOE psychologist stated in his 2007 Report that the individual could not be considered adequately rehabilitated until he has completed a minimum of two years of abstinence from non-prescribed medication, misused prescribed medication, and any illegal substance. DOE Ex. 16 at 18. He stated that the individual should maintain his abstinence while involved in outpatient substance abuse counseling with a professional provider, NA a minimum of twice per week with a sponsor and documentation of attendance, compliance with all treatment recommendations from all providers, occasional monitoring by his employer's psychological staff, and random drug testing as needed by any of the providers. He should also comply with all medical advice of his treaters and should work with a pain management physician-specialist as well. *Id.* After listening to the testimony of all the witnesses in the case, the DOE psychologist concluded that with respect to the individual's diagnosis of Pain Disorder, the DOE psychologist did not hear adequate evidence, such as detailed testimony from an orthopedic neurosurgeon or an internal medicine doctor, that would cause him to change his diagnosis. He noted, however, that the individual's subjective experience with pain is better. Tr. at 251. With respect to his current opinion of the individual's Substance Dependence diagnosis, the DOE psychologist stated that his diagnosis remains the same. *Id.* Moreover, he did not believe the individual is currently rehabilitated or reformed. The DOE psychologist based this current opinion on several facts: (1) the individual has had a history of contact with the medical system regarding his substance abuse issues from at least 2001; (2) last year, the individual met with various professionals who tried to intervene, but were unsuccessful and (3) the individual's eyes did not open about his addiction issues until about three months ago. He concluded that none of these factors speak to any demonstrable rehabilitation at this point. *Id.* at 253-254. Finally, the DOE Psychologist opined that it is prudent for the individual to have more than the minimum conventional 12-month period of rehabilitation, further stating that he is still more comfortable with a two-year period of rehabilitation or even a one and one-half year period if the individual is in a strong program with adequate monitoring. *Id.* at 255. He noted that it is hard to achieve long-term sobriety with Substance Dependence and that relapse following abstinence is common.

6. Hearing Officer's Evaluation

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with drug problems has presented sufficient evidence of rehabilitation or reformation. *See* 10 C.F.R. § 710.27. Hearing Officers properly give deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0215, (2005) , *Personnel Security Hearing*, Case No. TSO-0466, (2007).

Regarding rehabilitation and reformation, I gave considerable weight to the opinion of the DOE psychologist, who opined that the individual should maintain two years of abstinence while involved in outpatient substance abuse counseling, NA, compliance with treatment recommendations, occasional monitoring, random testing and work with a pain-management specialist in order to achieve rehabilitation and reformation. Moreover, from a common-sense perspective, the following factors militate against granting the individual's access authorization. Although the individual has taken positive steps toward rehabilitation, including his participation in aftercare, his participation in NA, and his meetings and follow-up with the staff psychologist, it is clear that the individual is only in the early stages of recovery and is in need of further treatment to accomplish rehabilitation and reformation. As mentioned earlier, the individual was in denial regarding his addiction and has only recently fully accepted his substance dependence and his need for treatment. Moreover, as of the date of the hearing, it has only been about three months since the individual understood and recognized he has addiction issues. Finally, I agree with the opinion of the DOE psychologist that a minimum of two years of rehabilitation, with maintenance of abstinence, is the standard needed in this case in order to demonstrate adequate evidence of rehabilitation or reformation. The record clearly supports the DOE psychologist's judgment and conclusion. Based on these reasons, I must find that the individual has not yet mitigated the security concerns associated with his diagnoses of Substance Dependence (Opioid), and Pain Disorder.

C. Mitigation of Criteria F and L Concerns

As stated above, the LSO cited Criterion F as one of the bases for the security concerns in this case. The key issue under Criterion F is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual's misrepresentations was serious. The individual's lack of candor concerning his diagnosis of Opioid Dependence and his use of narcotics could increase his vulnerability to coercion or blackmail and raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful; this important principle underlies the criterion set forth in 10 C.F.R. § 710.8(f).

During the hearing, the individual was questioned about the inconsistent and discrepant information he provided regarding his use of narcotics and Opioid Dependence. He stated that he did not intentionally lie to doctors about his past history with narcotics or his 2001 overdose. The individual also admitted to being in denial about his addiction and thus not understanding and accepting that

he had a problem. However, he reiterated that he did not deliberately or intentionally misrepresent his use of narcotics and his diagnosis of Opioid Dependence.

After considering the evidence before me, I find that the individual has mitigated the security concerns arising from the discrepant information regarding his use of narcotics. During the course of the hearing, the individual credibly testified that he did not deliberately and intentionally misrepresent information to health care providers. It is clear from the record that the individual was in denial about his addiction issues. As a consequence of his denial, the individual admitted that he minimized his problems with narcotics. The individual is a mature person who understands the importance of being truthful. However, I do not believe he deliberately and intentionally sought to provide false information. The record also supports the fact that the individual was slow to accept his addiction and only recently has come to the realization that he is a recovering addict and needs treatment. I am also persuaded by the testimony of the individual's witnesses who consistently stated that the individual is an honest and reliable person. Based on the foregoing, I find that the individual has mitigated the security concerns raised by Criterion F.

With respect to Criterion L, the DOE cited that (1) in 2004, the individual signed a DOE Drug Certification certifying that he would not use or be involved with illegal drugs while in possession of a DOE security clearance. Despite this, the DOE psychologist diagnosed him as Opioid Dependent. The DOE psychologist also noted that the individual exhibited drug-seeking behavior and was currently taking leftover narcotic pain medication without medical supervision and after one of his doctors advised him to discontinue its use and (2) in 2002 and 2007, the individual signed DOE Security Acknowledgments certifying that he understood that the use of any controlled substances could result in the loss of his DOE access authorization. However, he admitted that he may have violated the agreements by misusing narcotic medication. These incidents raise valid questions regarding the individual's honesty, reliability and trustworthiness. To mitigate the Criterion L concerns, the individual presented the testimony of his wife, supervisor, co-worker, and friend/sponsor, all of whom testified that he is an honest, trustworthy and reliable person. When questioned about the Drug Certification and DOE Security Acknowledgments, the individual testified that when he last used pain medication, it was a prescribed pain medication, thus asserting that the medication was not illegal. He also disputes that he gave inconsistent statements regarding his narcotic use. Although I am convinced from the individual's testimony that he now understands the seriousness of his addiction and that he would follow all DOE rules in the future, I believe that until the individual fully deals with his addiction through abstinence and treatment, his judgment and reliability are questionable. In the end, I must err on the side of national security with regard to this Criterion L concern and find that the individual did not present compelling evidence to mitigate Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F, H, K and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the

individual has brought forth convincing evidence to mitigate the security concerns associated with Criterion F. However, I also find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria H, K and L. I am therefore unable to find that granting 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 granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: January 23, 2009