

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 18, 2009

Case Number: TSO-0705

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's access authorization should be restored.¹ For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.²

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the Department of Energy (DOE) may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

¹ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

² Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996 are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

II. BACKGROUND

The Individual is an employee at a DOE facility. In January 1973, the Individual was granted a security clearance.

On April 13, 2008, the Individual was arrested by the local police department and charged with Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs (DUI). The Individual reported this arrest to the local security office (LSO). The LSO then conducted a Personnel Security Interview (PSI) with the Individual in August 2008. Subsequently, the LSO also arranged for the Individual to be examined by a DOE-Contractor Psychiatrist (DOE Psychiatrist).

Because the PSI failed to resolve the derogatory information related to his misuse of alcohol, the Individual's security clearance was suspended and the LSO requested an administrative review regarding the Individual's clearance. The Individual was issued a notification letter on January 15, 2009 (Notification Letter). In the Notification Letter, the Individual was informed that his history of alcohol-related arrests and alcohol misuse, along with a report from the DOE Psychiatrist diagnosing him as suffering from Alcohol Abuse, constituted derogatory information under 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also asserted that the Individual's history of alcohol-related arrests, an arrest for assault in 1991, admission that he consumed alcohol in 2003 in violation of his probation from an earlier 2001 alcohol-related arrest, driving after consuming alcohol in 2008 in contravention of an alleged promise made during a January 2002 Personnel Security Interview (2002 PSI), and his misuse of alcohol after signing several Security Acknowledgment forms, constituted derogatory information under 10 C.F.R. § 710.8(l) (Criterion L).³

A hearing was held in this matter. At the hearing, DOE presented one witness, the DOE Psychiatrist. The Individual offered his own testimony, as well as that of his girlfriend, two managers (Managers 1 and 2), his brother, an Employee Assistance Program Psychologist (EAP Psychologist), a licensed clinical social worker (Therapist), and two friends (Friend 1 and 2). The DOE submitted 26 exhibits (Exs. 1-26) for the record. The Individual submitted 11 exhibits (Ind. Exs. A-K).

III. FACTUAL FINDINGS

The facts in this case are essentially not in dispute. A brief summary is provided below.

The Individual was hired for a position at a DOE facility in November 1972. Ex. 21 at 3. In January 1973, the Individual was granted a security clearance. Ex. 10 at 1.

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

In May 1991, the Individual was charged by a local police department with Simple Assault for an incident where he allegedly pushed his then-wife during an argument. DOE Exhibit (Ex.) 12 at 3; Ex. 11; Ex. 24 at 35.

In June 1996, the Individual executed a Security Acknowledgment form indicating that he understood that if it were determined that he used alcohol habitually to excess, such use could result in the loss of his security clearance. Ex. 19. The Individual signed identical forms again in May 2002, and May 2008. Ex. 18 (2002 form); Ex. 17 (2008 form).

In December 2001, the Individual was arrested for Driving While Intoxicated (DWI). Ex. 16 at 1. The Individual pled guilty to the charge, was fined, and among other requirements, was placed on unsupervised probation for one year. Ex. 24 at 25-27; Ex. 16 at 1-3. One of the conditions of his probation was that he refrain from consuming alcohol during his probation period. Ex. 24 at 25. The Individual was also required to participate in a two-day "first offenders" program. Ex. 24 at 25; Transcript of Hearing (Tr.) at 128.

In January 2002, the LSO conducted a Personnel Security Interview (2002 PSI) with the Individual. In this PSI, the Individual stated that since his arrest in December 2001 he continued to consume limited amounts of alcohol. Ex. 24 at 28; Ex. 25 at 8. During this interview, when asked what his future intentions on alcohol use, the Individual's answer was "very limited." Ex. 25 at 22.

In April 2008, the Individual was arrested by a local police department and charged with Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs (DUI) after wrecking his automobile into a parked car. Ex. 15; Ex. 24 at 9-10. Later in April 2008, the Individual entered into a one-year Recovery Agreement with the Employee Assistance Program Coordinator at the DOE facility. Ex. 13; Individual Exhibit (Ind. Ex.) B. The program consisted of referral to a formal alcohol counseling program, 12 unannounced alcohol tests, and monthly meetings with the Employee Assistance Program (EAP) at the DOE facility. Ex. 13; Ind. Ex. B. The Individual entered into a formal alcohol counseling program in May 2008.

The LSO conducted another PSI with the Individual in August 2008. Ex. 24. In this interview, after presenting the Individual with statements he made to an Office of Personnel Management (OPM) investigator, the Individual admitted that he may have consumed alcohol during the probation period after his 2001 arrest. Consumption of alcohol violated the terms of this probation. Ex. 24 at 28-31.

As part of its investigation concerning the Individual's 2008 DUI arrest, the LSO referred the Individual for an examination by the DOE Psychiatrist. The DOE Psychiatrist examined the Individual in October 2008 and later that month issued a report regarding his findings. The DOE Psychiatrist diagnosed the Individual as suffering from Alcohol Abuse. Ex. 12 at 1. He went on to state that for the Individual to demonstrate sufficient evidence of rehabilitation, the Individual would have to continue the treatment program he was receiving through the EAP as well as attendance at Alcoholics Anonymous (AA) meetings for a period of one year from the date the Individual stopped consuming alcohol, which the DOE Psychiatrist determined to be in April 2008. Ex. 12 at 10.

In September 2008, the Individual pled guilty and was given a fine and put on probation. Ex. 15 at 4. As part of his probation, the Individual was also required to attend at least one AA meeting weekly. Ex. 12 at 10.

The Individual completed his treatment program in March 2009 after attending a total of 27 group meetings, as well as several individual sessions with the Therapist. Ind. Ex. C (Discharge Summary). The Individual continues to meet monthly with the program as of the date of the hearing. Transcript of Hearing (Tr.) at 17.

IV. HEARING TESTIMONY

A. Individual's Girlfriend

The Individual's girlfriend testified that she has known the Individual for approximately ten and a one-half years and has been dating the Individual for eight and a one-half years. Tr. at 26-27. She sees the Individual every day, except when the Individual is on official travel. Tr. at 27. The Individual and she have attended a number of events hosted by the other's family. Tr. at 27. During a number of social events, the Individual has been asked if he wants a beer, which the Individual refuses, and asks for a Diet Coke. Tr. at 43-44. No one has given the Individual any difficulties for refusing an alcoholic beverage. Tr. at 43-44.

The Individual's arrest in April 2008 was a "life-changing" event for both of them. Tr. at 27. The day after his April 2008 arrest, she and the Individual disposed of all of the alcohol in each of their houses. Tr. at 38. The accident in 2008 was a "wake-up call" to the Individual since another person could have been injured. Tr. at 40. She believes that the Individual realized he could not live with the responsibility of injuring a person because he was driving while intoxicated. Tr. at 41.

When the Individual decided to seek treatment for his alcohol problem, "he threw himself into treatment." Tr. at 28. She went on to testify that the Individual is dedicated to going to AA meetings and if they do not meet for lunch he will often attend a meeting during that time. Tr. at 32. She also has also attended a few meetings with him. Tr. at 32. To support the Individual as well as to benefit herself, the Individual's girlfriend also made the decision to abstain from consuming alcohol. Tr. at 33, 38. A side effect of their abstinence is that she and the Individual have lost a significant amount of weight, approximately 30 and 25 pounds, respectively. Tr. at 33.

Each of them has a key to the other's house. She has made a number of visits to the Individual's house unannounced and without his presence and has never found any alcohol in his house since April 2008. Tr. 36-37. The last time she has observed the Individual consume an alcoholic beverage was the night of his accident and arrest in April 2008. Tr. at 36. She and the Individual have been to a number of social events when others are consuming alcohol but the Individual has not experienced any desire to consume alcohol. Tr. at 29. He has also disclosed to his friends that he no longer consumes alcohol and has no problem sharing with others the circumstances surrounding his abstinence or the removal of his clearance. Tr. at 30-31. Because of her experience with a number of alcoholics, she believes she would detect any use of alcohol by the Individual. Tr. at 38.

With regard to the Individual's first DWI in 2001, the Individual's girlfriend believes that he eventually began to consume alcohol again because he sought "to do it on his own" and did not receive sufficient treatment. Tr. at 39. While he attended the driving school pursuant to the court's order, he did not seek EAP or any other treatment. Tr. at 39. When he began to consume alcohol after the 2001 DWI, the Individual's use did not cause him any immediate problems or problems in their relationship. Tr. at 48.

Overall, she believes that the Individual is a person with integrity and that knowing him has made her a better person. Tr. at 34. Since his abstinence, the Individual has been more relaxed, feels better, and realizes he can have a good time without consuming alcohol. Tr. 41-42.

B. Individual's Therapist

The Individual's therapist is a licensed clinical social worker who is the therapist at the alcohol treatment facility the Individual was referred to by the EAP Psychologist. The Individual began treatment at the facility in May 2008 and self reported that he had stopped consuming alcohol in April 2008. Tr. at 12. The treatment program at the facility focuses on a thorough understanding of the alcohol disease process. Tr. at 13. Additionally, the program focuses on an individual understanding the triggers for alcohol consumption and developing coping skills to deal with the urge to consume alcohol. Tr. at 13. All individuals are also screened for Post Traumatic Stress Disorder. Tr. at 13. The program also features stress management techniques and connecting individuals to 12-step programs. Tr. at 14. At the level of treatment that the Individual received, the Individual was required to meet with the program weekly for two hours. Tr. at 13. The meetings feature educational programs on alcohol problems and mini-lectures. Tr. at 14. In the Individual's case, the treatment program was tailored to his specific needs and the Therapist reviewed the Individual's progress with individual meetings. Tr. at 19.

The Therapist described the Individual's participation in the program as "stellar." Tr. at 15. The Individual went through two cycles of treatment. In the first cycle, the Individual attended 15 group meetings and the second, 12 group meetings. Tr. at 22. In both cycles, he attended more than the required number of meetings. Tr. at 22. Since she is the only therapist for "level one" programs at the facility, she personally observed his participation. Tr. at 21. The Individual is also participating in the facility's "continuing care" program. Tr. at 23.

When asked if the Individual had an adequate level of treatment to achieve reformation or rehabilitation from his alcohol problem, the Therapist replied:

He's had an adequate amount of treatment. He's gotten over the most vulnerable year of change. You know, I think he's in good shape as far as that goes in terms of meeting those requirements. Again, I have to say that it's a very insipid disease, so there is no magic bullet here.

Tr. at 25.

When asked as to what makes the Individual more likely to maintain his sobriety than in 2001, when he allegedly gave an assurance to DOE that he would not misuse alcohol, the Therapist stated:

My sense -- well, also research indicates that not only my sense but my sense of [the Individual's] personal experience was there wasn't really adequate treatment the first time around, he didn't have real thorough treatment, and that all the literature points to the most sustained change in recovery is through state-of-the-art kind of evidence-based counseling methods, which I don't mean to sound egotistical, but I have training in that around addictions, and also this more thorough process of looking at your entire lifestyle issues.

My understanding, which is not thorough, of his first round of -- well, of treatment was that it was not very legitimate, was that it was not very extensive.

Tr. at 23-24.

C. Manager 1 and Manager 2

Managers 1 and 2 are the Individual's first and second line supervisors and testified to his work performance. Tr. at 51-52, 60. Their opinion of Individual's work performance was reflected in their testimony that his performance is "great" and that he is a "very well-respected high contributor to the organization." Tr. at 52, 60. Both stated that they were unaware of security violations committed by the Individual and both recommended that his clearance be reinstated. Tr. at 54-55, 61-62.

D. Individual's Brother

The Individual's brother testified that he is with the Individual approximately two or three times a week. Tr. at 66. He has not observed the Individual consume alcohol during the past 12 months and last saw the Individual consume an alcoholic beverage sometime before his 2008 accident and arrest. Tr. at 66. He believes that the Individual has not had any desire for alcohol during that period and that the period of abstinence has not affected the Individual's personality. Tr. at 67. He also testified that the Individual has been open with others concerning his abstinence. Further, the Individual has not appeared to be disturbed when the Individual's brother goes for a beer after a round of golf together. Tr. at 67-68. The Individual's brother plays golf with the Individual two or three times a week and has attended other social events with the Individual at their mother's house. Tr. at 68. When asked at these events if he wants an alcoholic drink, the Individual refuses and asks for a soft drink. Tr. at 68. Since the 2008 accident and arrest, whenever he has been at the Individual's house and looked in the refrigerator, he has never observed even "a bottle of beer". Tr. at 70.

E. Friend 1 and Friend 2

Friends 1 and 2 both worked with the Individual at the DOE facility and have known the Individual for over 30 years. Tr. at 74, 83. Friend 1 sees the Individual and his girlfriend approximately weekly, primarily through playing golf. Tr. at 74 He believes that the Individual

is a truthful and reliable person. Tr. at 75. Friend 1 testified that he has not seen the Individual consume an alcoholic beverage for at least the past year. Tr. at 77-78. He has seen the inside of the Individual's refrigerator a number of times and has never seen there any type of alcoholic beverage. Tr. at 80.

Friend 2 has seen the Individual four or five times in the past year and has associated with the Individual in the past ten years while working as a consultant. Tr. at 84. The last time Friend 2 observed the Individual consume alcohol was several years ago. Tr. at 86. Friend 2 has observed the Individual decline offers of alcoholic beverages while on business travel in the past year. Tr. at 84. Further, when Friend 2 offered the Individual an alcoholic beverage at Friend 2's house, the Individual declined. at 84. Friend 2 stated that he would have no concerns if the Individual's clearance were restored or were he to work on classified systems. Tr. at 85.

F. EAP Psychologist

The EAP Psychologist, a licensed clinical psychologist, described the DOE facility's recovery program for employees suffering from substance abuse and dependency problems. Tr. at 91, 108. The standard program at the facility consists of the employee's signing a one-year agreement in which he or she consents to take 12 unannounced urine tests, have monthly contact with the EAP and accept a referral to an outside professional substance abuse treatment program for diagnosis and for formulation of a treatment plan. Tr. at 91. In the Individual's case, he signed the agreement in late April 2008 and he was referred an alcohol treatment facility at which he underwent treatment. Tr. at 92. The Individual successfully fulfilled the one-year agreement he signed with EAP and has now signed another one-year agreement. Tr. at 92. With regard to the second one-year agreement, the EAP Psychologist did not believe that the agreement was a "necessity" but believed it was desirable since the Individual and he had developed a good relationship and it provides additional support. Tr. at 95-96.

The EAP Psychologist testified that the Individual has been very cooperative with all aspects of the agreement. Tr. at 93. The EAP Psychologist has reviewed all of the progress reports issued by the alcohol treatment facility and believes that the Individual has "engaged" with the facility's program. Tr. at 93, 111. He also testified that the Individual is attending AA meetings and that he considers attendance at these meetings to be a part of the Individual's treatment program. Tr. at 94.

As to the progress that the Individual has made from the first time they met, the EAP Psychologist testified:

My opinion . . . is I think you've come a long ways since we first met a year ago. I think you've gained a very good understanding of your alcohol problem -- of your alcohol abuse issue, and I think in a way that you didn't before, I think, a few years ago.

I think you've really gained a good understanding. I think you've learned a lot through the [alcohol treatment facility], and I think you -- at this point, you understand that you have to maintain abstinence, and that's your job at this point, is to maintain abstinence, and I think you've really kind of gotten that, and you

understand that, and I think you've broken through some of those kind of denial patterns that I think you maybe had a year ago, which is very typical for someone with an alcohol problem.

I think you've done very well. I'm real proud of you, actually. I think you've done great. I guess we'll keep seeing each other for another year, but I think you've done great.

Tr. at 93-94.

When asked about the Individual's prognosis, the EAP Psychologist testified:

I think you have an excellent prognosis. I mean, we like to see -- and I think mental health professionals who work in substance abuse, in general, we -- kind of one hallmark we have is a year, we like to see folks with a year of sobriety.

You have done that successfully, you're willing to continue with contact with the clinical professionals, and so I think those kinds of things tell me that you have a very good prognosis for continuation with your -- with your recovery and sobriety.

I consider you to be in remission at this point. You've made a year, and I consider you to be in remission, from my perspective as a psychologist.

Tr. at 94-95. He also opined that the Individual has shown adequate evidence of reformation or rehabilitation from his alcohol problem. Tr. at 100. He noted that the Individual has internalized his alcohol problem and that the Individual's girlfriend and friend provide a good support system. Tr. at 99-100. When asked about why any assurance concerning his future alcohol consumption should be entitled to more credence than his assurance in 2002, the EAP Psychologist stated that the Individual has overcome his denial about his problem and that unlike in 2002, he now has received adequate treatment. Tr. at 97.

G. The Individual

The Individual testified that his last consumption of alcohol occurred in April 2008 on the night of his accident and arrest. Tr. at 114. The Individual testified as to his participation in the alcohol treatment facility's program and believes that his participation has helped him maintain his sobriety. Tr. at 124. He has learned to identify various triggers for his alcohol use, such as socialization with friends and family. Tr. at 125. He learned that what he believed was "social drinking" was in fact problematic alcohol consumption. Tr. at 125. He has learned to "control" trigger situations and how to deal with people in those types of situations. Tr. at 125.

As part of his probation, the Individual has an alcohol interlock installed in his automobile for one year. Tr. at 126. The system requires the Individual to provide a sample of his breath to and will not operate if it detects alcohol. Tr. at 126; *see* Ind. Ex. F.

When asked about his “first offenders” course in 2001, the Individual stated that it consisted of two days of speakers and other educational materials. Tr. at 127-28. As he finished the course, he did not believe that he had an alcohol problem. Tr. at 128-29. However, due to the treatment and education he received at the alcohol treatment facility, he now has a greater understanding and awareness. Tr. at 129.

With regard to the 1991 assault incident, the Individual has no recollection of being arrested or being taken to jail, but concedes his memory may not be accurate due to the amount of time that has elapsed since the incident. Tr. at 130. He does remember having an argument with his then-wife and that the police were called to their residence. Tr. at 130. He also remembers being subsequently served with a restraining order. Tr. at 131. During the time of the incident, just prior to their divorce, the Individual and his then-wife were going through a difficult period. Tr. at 131. He does not have any memory of ever having had a physical affray or fight with any person. Tr. at 131.

With regard to the allegation in the Notification Letter that he consumed alcohol in violation of his first probation, he testified that he was on probation for a one-year period. Tr. at 133. When questioned by the OPM investigator, he may have given the incorrect dates when he resumed consuming alcohol. Tr. at 133. He fully admits that he may have consumed alcohol during the probation period. If he did, he believes that he did so because he was mistaken as to when his probation ended. Tr. at 133.

H. DOE Psychiatrist

The DOE Psychiatrist was present during the testimony of all of the witnesses. When he first evaluated the Individual he diagnosed him as suffering from Alcohol Abuse. Tr. at 139. At that time, he believed that for the Individual to show adequate evidence of rehabilitation or reformation from his Alcohol Abuse, the Individual would have to abstain from alcohol for a period of a year and engage in a year-long treatment program. Tr. at 139. He believed that the Individual’s alcohol problem was in the “moderate range” of severity. Tr. at 140.

With regard to the recommended period of abstinence, the DOE Psychiatrist believes that as of the date for the hearing the Individual has achieved slightly over one year of abstinence. Tr. at 140. He also noted that the Individual has undergone 12 urine tests during that period and all were negative for alcohol. Tr. at 141; *see* Ind. Ex. E. He was impressed by the way the Individual has “taken things up a notch” with his treatment and by the Individual’s motivation. Tr. at 142. He believes that the Individual’s change in lifestyle and his participation in AA has been very helpful. Tr. at 142. He also found that the Individual’s treatment program was “a very good one.” Tr. at 142-43. The DOE Psychiatrist was impressed by the treatment providers’ assessment of the Individual’s participation in treatment and their prognoses for the Individual. Tr. at 143. The DOE Psychiatrist concluded:

. . . given the time of his sobriety and the rigor of his treatment program, I think he has completed all the things I recommended; namely, one year of both of those, to establish evidence of rehabilitation and reformation.

So based on what I see today, I think there is adequate evidence of rehabilitation or reformation at this time.

Tr. at 143.

When asked about his statement in his evaluative report citing the Individual's prior assurance that he would consume alcohol and drive, the DOE Psychiatrist explained that this fact is now less of a concern. Tr. at 144. The Individual at that time suffered from significant denial. Tr. at 144. However, given the changes the Individual has undergone over the past year, the DOE Psychiatrist thinks he is now a different person and his commitment is more reliable. Tr. at 144-45.

V. ANALYSIS

A. Criterion J

The derogatory information concerning Criterion J centers on the Individual's alcohol problem and the legal problems resulting from his problem. Criterion J concerns conduct indicating that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

It is beyond dispute that an individual suffering from an alcohol problem raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0221* (February 16, 1999). Given the DOE Psychiatrist's finding that the Individual suffered from Alcohol Abuse, the local security office had more than sufficient grounds to invoke Criteria J. The Individual believes his efforts in treatment have mitigated the concerns raised by his Alcohol Abuse. I agree.

The testimony of three mental health professionals is all in agreement that the Individual has demonstrated adequate evidence of rehabilitation or reform from his Alcohol Abuse. The Individual has been abstinent from alcohol for over a year. The testimony of the Individual's girlfriend and friends provide support for this finding, along with the negative random urine tests the Individual has submitted into the record. He has also submitted evidence documenting his attendance at AA meetings. *See Ind. Ex. I*. The testimony of the Individual's Therapist provides strong support that the Individual has embraced his treatment program. Testimony from his girlfriend and friends shows that the Individual is able to cope with living an alcohol-free lifestyle in the face of interacting with others who still consume alcohol. Further, the Individual is no longer in denial about his problem, but has accepted responsibility for the problem and is proactively treating his condition. In contrast to the situation in 2002, after his first alcohol-related driving arrest, the Individual has undergone an extensive and comprehensive treatment program. Given the substantial evidence in the record, I find that the Individual has demonstrated reformation and rehabilitation from his Alcohol Abuse. With this rehabilitation, the risk that the Individual will misuse alcohol in the future is low and consequently, I find that the security concerns raised by his diagnosis of Alcohol Abuse and his alcohol-related arrests are sufficiently mitigated.

B. Criterion L

The Criterion L derogatory information centers on the Individual's two arrests for DUI and DWI, a 1991 arrest for simple assault after a family altercation, his consuming alcohol in violation of probation from the first alcohol arrest, and his failure to honor an alleged commitment in the 2002 PSI to no longer drive after consuming alcohol and his continuing to drink alcohol to excess after signing three Security Acknowledgments.

The Individual's history of arrests clearly raises Criterion L concerns. Failure to conform one's conduct to the requirements of the law raises a fundamental issue of reliability, honesty and trustworthiness. Alcohol-related arrests have been consistently found to raise Criterion L concerns. *See, e.g., Personnel Security Hearing, Case No. TSO-0419* (June 12, 2007); *Personnel Security Hearing, Case No. TSO-0180* (January 5, 2005) (*TSO-0180*).

With regard to the Criterion L concerns raised by the two alcohol-related arrests and his consumption of alcohol while on probation from his 2001 arrest, I find that all of these incidents are related to the Individual's alcohol problem. The Individual has provided sufficient evidence of rehabilitation and reformation from his underlying alcohol problem to resolve any future concern as to honesty, reliability or trustworthiness relating to the misuse of alcohol. *See TSO-0180 slip. op.* at 6.

With regard to the allegation that the Individual consumed alcohol and drove, despite a promise made to DOE in the 2002 PSI, I find that this allegation is without sufficient basis to raise a concern in itself. During this interview, when asked what his future intentions were regarding alcohol use, the Individual's answer was "very limited." Ex 25 at 22. This is not an explicit commitment not to consume alcohol and drive. Even if such a promise had been made by the Individual, I attach no great weight to this incident. As discussed above, the Individual was in a state of denial concerning his alcohol problem when he made the commitment. The Criterion L security concerns raised by his failure to honor the promise have been resolved by the Individual's evidence of rehabilitation and reformation of the alcohol problem which led to his misuse of alcohol. This is underscored by the testimony of the medical experts in this case, all of whom believe that the Individual did not receive adequate treatment for his alcohol problem until after the 2008 arrest.

I also do not find that the Individual continued misuse of alcohol after signing the three Security Agreements in and of itself raise any Criterion L concerns. The Notification Letter describes his use of alcohol after signing the agreements as a violation of a "commitment." Ex. 1 at 2-3. The characterization of the Individual's use of alcohol as a violation of a commitment is simply incorrect. The Security Agreements asked the Individual to acknowledge that misuse of alcohol can result in loss of one security clearance. No where in these documents is there a promise that the Individual will not misuse alcohol or any other affirmative commitment of future conduct or action. By signing the form, one only acknowledges the fact that misuse of alcohol can be a basis for loss of one's security clearance. Consequently, no issue of honesty, reliability or trustworthiness is raised by these documents in this case. *See Personnel Security Hearing, Case No. TSO-0586* (June 24, 2008) (individual has not engaged in unreliable or untrustworthy behavior solely because she knew illegal drug use is against DOE policy by signing security

acknowledgment form and then subsequently using an illegal drug); *Personnel Security Hearing, Case No. TSO-0103* (September 10, 2004).

The remaining incident raised as Criterion L derogatory information is the Individual's 1991 arrest for Simple Assault after a family altercation. The security concern raised by this arrest is mitigated by the approximately 18 years that has elapsed since this solitary incident. Additionally, there is no other evidence in the record that indicates that the Individual has engaged in any similar type of conduct. The Individual's girlfriend testified that during the 10 years she has known the Individual he has never demonstrated any type of physical abuse towards her or others. Tr. at 132. Any security concern raised by this incident has been mitigated by the solitary nature of the incident and the passage of time.

In sum, all of the security concerns raised by the Criterion L derogatory information have been resolved.

VI. CONCLUSION

As explained above, I find that the security concerns under Criterion J related to the Individual's diagnosis of Alcohol Abuse and alcohol-related arrests have been resolved. I also find that the security concerns under Criterion L related to his various arrests, his consumption of alcohol in violation of probation, and his alleged failure to honor commitments related to alcohol have been resolved. I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date:

Concurrence

hg-03 rac 5/21/09

Cronin _____