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July 13, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 15, 2009

Case Number: TSO-0733

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 should receive access authorization.¹ For the reasons detailed below, it is my decision that the Individual should not be granted access authorization.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's employer at a DOE facility requested that the Individual be granted access authorization. As part of the procedure to receive a clearance, the Individual submitted a SF-86 form, "Questionnaire for Sensitive Positions" (QSP), dated September 10, 2007. In the QSP, the Individual did not list several prior alcohol-related arrests. Subsequent investigation uncovered that the Individual had an extensive history of alcohol-related arrests.

To resolve the concerns raised by these arrests, the LSO conducted a Personnel Security Interview (PSI) with the Individual on February 26, 2008. The Individual was also referred to a DOE-contractor Psychiatrist (DOE Psychiatrist) for examination. On September 25, 2008, the Individual was examined by the DOE Psychiatrist. In his September 29, 2008 evaluative report (Report), the DOE Psychiatrist diagnosed the Individual as suffering from Alcohol Abuse in remission. In the Report, he opined that to demonstrate rehabilitation or reformation from Alcohol Abuse, the Individual would have to complete a 24- to 36-month period of responsible consumption of alcohol (without alcohol-related legal difficulties) or completely stop consuming alcohol.³ DOE Exhibit (Ex.) 3 at 8.

Because neither the PSI nor the psychiatric examination resolved the derogatory information related to his history of alcohol-related arrests, the processing of the Individual's application for a security clearance was suspended and the LSO requested an administrative review regarding the Individual's eligibility for a clearance. Subsequently, the Individual was issued a notification letter on February 13, 2009 (Notification Letter). Ex. 1.

In the Notification Letter, the Individual was informed that the DOE Psychiatrist's diagnosis of Alcohol Abuse, his prior participation in two inpatient treatment facilities for alcohol disorders, his history of consuming alcohol and driving, and his admitted use of alcohol in violation of terms of probation arising from an alcohol-related traffic offense constituted derogatory information under 10 C.F.R. § 710.8(j) (Criterion J).⁴ Ex. 1 (Statement of Charges) at 1-2. The Notification Letter also asserted that the Individual's numerous arrests mostly for alcohol-related offenses and his admitted refusal to attend an military-sponsored inpatient treatment center resulting in his subsequent General Discharge (under honorable conditions) from the military constituted derogatory information under 10 C.F.R. § 710.8(l) (Criterion L).⁵ Additionally, the Individual's failure to list in his QSP all of his alcohol-related arrests was cited as derogatory information under 10 C.F.R. § 710.8(f) (Criterion F).⁶

³ In the Report, the DOE Psychiatrist did not specify a specific period of abstinence from alcohol.

⁴ Criterion J refers to information indicating that an individual "[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).

⁵ 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).

⁶ Criterion F refers to information indicating that an individual has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements

A hearing was held in this matter. At the hearing, DOE presented two witnesses, the DOE Psychiatrist and the Personnel Security Specialist who conducted the PSI. The Individual offered his own testimony, as well as that of a friend and a supervisor. The DOE submitted 14 exhibits (Exs. 1-12) for the record. The Individual submitted seven exhibits (Ind. Exs. A-G).

III. FACTUAL FINDINGS

The factual accuracy of the majority of events described in the Notification Letter is not challenged. The Individual has been arrested or charged on a number of occasions as summarized in the table below:

<u>Date</u>	<u>Charge</u>
10/1987	Driving Under the Influence of Alcohol (DUI)
7/1989	Discharge of a pistol at an armory (military offense)
11/1989	Unauthorized Absence (military offense)
11/1989	Driving While Intoxicated on a military reservation
11/1989	Issuing a worthless check (\$100) at a military facility
6/1991	DUI/Evading and Speeding
12/1992	DUI
4/1994	DUI
3/1997	DUI
2/2003	Disturbing the Peace ⁷
7/2007	DUI

made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization” 10 C.F.R. § 710.8(f).

⁷ The Individual’s misuse of alcohol played a significant role in this arrest. In describing the events that led to the arrest, the Individual testified that “I was probably to the point of being legally intoxicated.” Transcript of Hearing (Tr.) at 161; Ex. 12 at 3 (police report of arrest describing the Individual as “intoxicated”).

Ex. 1 (Statement of Charges) at 1-2; Ex. 4 at 6, 8, 11, 20, 31, 40-41, 45, 47-48, 51-54, 102-03; Ex. 12.

While in military service, approximately in 1989, the Individual was referred to an inpatient alcohol rehabilitation treatment program center for three months. Ex. 4 at 15-16. Among the recommendations he received while a patient was that he not consume alcohol. Ex. 4 at 17. The Individual abstained from alcohol after his discharge from the program for a period of five or six months. Ex. 4 at 19-20.

The Individual was discharged from military service when he refused to attend another substance abuse treatment program. The Individual, who sought early release from the military, was motivated to undertake this action based on advice that his refusal would result in his discharge from the military. Tr. at 179-81; Ex. 4 at 27-28.

In lieu of serving a jail sentence, the Individual also attended another inpatient treatment program after his arrest in 1994 for DUI. Ex. 4 at 41, 67; Tr. at 48, 151. This facility recommended that the Individual stop consuming alcoholic beverages and continue with Alcoholic Anonymous meetings. Ex. 4 at 43. The Individual however began to consume alcoholic beverages again after his probation period for the 1994 DUI had elapsed. Ex. 4 at 43.

After his latest arrest for DUI in 2007, the Individual pled guilty to a charge of inattentive driving and was found to have refused to submit to an alcohol breath test. Ex. 4 at 53-54. The Individual paid a fine and was sentenced to a period of probation. Ex. 4 at 55. His probation period specified that he was not to consume any alcoholic beverages. Ex. 4 at 55. However, the Individual consumed alcohol on one occasion while on probation for the 2007 DUI. Ex. 3 at 3; Tr. at 188.

V. ANALYSIS

A. Criterion J

Excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability will be impaired to the point that he will fail to safeguard classified matter or special nuclear material. *See Personnel Security Review*, Case No. VS0-0554 (May 13, 2002). Given the DOE Psychiatrist's Report diagnosing the Individual as suffering from Alcohol Abuse in remission, the LSO had sufficient grounds to invoke this criteria of derogatory information under Part 710.

At the hearing, the DOE Psychiatrist testified as to his examination of the Individual. As part of his examination, he interviewed the Individual and arranged for him to take three psychometric tests, the Minnesota Multiphasic Personality Inventory (MMPI), the Millon Personality Inventory and the Substance Abuse Subtle Screening Inventory (SASSI). Tr. at 103-04. He testified that the SASSI was designed to determine whether a person has "a probability" of having a substance abuse disorder at some time in their life. Tr. at 108. Reviewing the Individual's SASSI answers, he assigned the Individual 9 points based on his answers to the test. This score would indicate a possibility of a present or past substance abuse disorder. Tr. at 110. However, in determining this score to be 9 points, he "corrected" the score associated with two

of the Individual's answers to SASSI questions. With regard to the question "Have you ever taken a drink or drinks to help you express your feelings or ideas," the Individual gave a negative response scoring 0 points. Tr. at 109. However, because the Individual had told him in their interview that he would drink alcohol to socialize, the DOE Psychiatrist scored this question with 2 points. Tr. at 109. With regard to another question, "Have you gotten in trouble on the job, in school or at home because of drinking?" the Individual answered "once or twice," which scored 1 point on the test. Given the Individual's history of six DUI arrests, the DOE Psychiatrist effectively scored this answer as "several times" which changed his score on the question from 1 point to 2 points. Tr. at 110. These corrections changed the Individual's SASSI score from 6 to 9.⁸

The Individual's MMPI results, which were scored and analyzed by a computer, indicated that the Individual was "defensive" in taking the test but that the results of the MMPI examination were still valid. Tr. at 112-13. The test also indicated that there was the possibility that the Individual may have demonstrated "conscious distortion" in taking the test. Tr. at 113. The test also reported that the Individual acknowledged having a problem with alcohol in his MMPI responses. Tr. at 114. The Millon test results, also scored and analyzed by computer, indicated that the Individual "revealed a distinct tendency to avoid self-disclosure." Tr. at 115. The test also indicated the possibility of a "borderline alcohol dependence." Tr. at 116-17.

In making his diagnosis of Alcohol Abuse, the DOE Psychiatrist utilized all of the information obtained in his interview with the Individual, the three psychometric tests and his review of the information sent to him by the LSO. Tr. at 119.⁹ The diagnosis was made using the criteria specified in the Diagnostic and Statistical Manual, 4th Edition, Text-Revision (DSM-IV-TR). Tr. at 119-20. Given the fact that at the time of his interview of the Individual, the Individual had not had any adverse alcohol-related events for the prior year and a half, the DOE Psychiatrist specified the Individual's Alcohol Abuse as being "in remission." Tr. at 121.

The DOE Psychiatrist also determined that the Individual's current alcohol consumption pattern could be problematic for the reasons outlined in DOE Adjudicatory Guideline G.¹⁰ Tr. at 123-24. The DOE Psychiatrist noted his concerns that the Individual has had a number of alcohol-related incidents away from work, including DUIs. Tr. at 123. Additionally, the Individual has had significant inpatient counseling and has suffered adverse consequences from his alcohol

⁸ A score of 6 would have indicated that a person has a "low" probability of having a substance abuse disorder. Tr. at 146.

⁹ The DOE Psychiatrist also diagnosed the Individual as suffering from "Depressive Disorder not otherwise specified." Ex. 3 at 7; Tr. at 148-49. This disorder was not cited as a security concern.

¹⁰ The DOE Adjudicatory Guidelines explain the security concerns raised by derogatory information described in the Part 710 regulations. *See* "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 (DOE Adjudicative Guidelines). The Guidelines regarding excessive alcohol consumption state:

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.

consumption such as fines and being placed on periods of probation. Tr. at 123-24. The fact that the Individual has relapsed after completion of two alcohol treatment programs is also a concern. Tr. at 124-25.

The DOE Psychiatrist confirmed his opinion as stated in the Report that in order for the Individual to demonstrate adequate evidence of rehabilitation or reformation, the Individual would have to have a 24- to 36-month period of no alcohol-related problems at his current level of alcohol consumption. With regard to his alternate non-specific recommendation of abstinence described in the Report, the DOE Psychiatrist elaborated that a 12- to 18-month period of abstinence from alcohol would also constitute adequate evidence of rehabilitation or rehabilitation. Tr. at 144-45. The duration of the Individual's alcohol-related difficulties was a significant factor in this specific opinion. Tr. at 145-46.

The Individual testified that, despite his intention to continue to consume alcohol, he does not feel that he has an alcohol problem or, if he has one, it is not a security concern. Tr. at 185-86. In his testimony, the Individual went on to comment:

And I believe that the way I am today, what I have evolved from '97 to now is leaps and bounds. I don't have a desire or want to become intoxicated. It's not -- if I go to have a couple of beers, it's when I'm hanging out with some friends, or some wine with the wife.

I don't know if there's still some stubbornness or some denial that I'm not seeing, but the main thing to me is if -- okay, what is the problem? Where -- I don't know. I don't have money problems or relationship problems. I don't -- I'm never late for work.

Tr. at 186.

The Individual also submitted into evidence a certificate of completion from a counseling center attesting to the Individual's participation in a 12-week education program. Ind. Ex. B. The program was an option offered by his parole officer for the probation imposed from the 2007 DUI. Tr. at 183-84. The course involved weekly meetings with educational programs regarding illegal drugs and alcohol. Tr. at 184. The Individual also submitted a letter from one of the counselors at the center. In the letter, the counselor stated that the 12-week course was designed for people who do not meet the criteria for treatment but who need "some contact for monitoring and prevention." Ind. Ex. E. He also stated that throughout the 12-week course the Individual "gave no evidence that his drinking was affecting his level of functioning or decision making process." Ind. Ex. E.

The Individual also offered two witnesses to testify as to his current behavior with regard to alcohol consumption. The Individual's friend has known the Individual for approximately five years. Tr. at 13. The Individual's friend testified that he has not observed the Individual driving after consuming alcoholic beverages. Tr. at 14. When they socialize or go to a locality to play cards, he has not observed the Individual become intoxicated. Tr. at 14, 17-18. Over a six-month period they traveled to play cards approximately three times. Tr. at 20. On these occasions, the Individual's friend estimates that the Individual consumed three or four beers. Tr. at 19. When they go to play cards, the Individual usually drives to the friend's house. Then, the Individual's

friend will drive them both to the gaming location. Tr. at 19. Afterwards, the friend returns the Individual to the Individual's house, and the following day the Individual comes to retrieve his car from the friend's residence. Tr. at 23. The friend testified that the Individual had requested this travel arrangement because of his concern about consuming alcohol and driving and his history of DUIs. Tr. at 23-24, 27.

One of the Individual's higher-level supervisors also testified on the Individual's behalf concerning his alcohol consumption. He testified that the Individual has been to his house and consumed alcoholic beverages. Tr. at 31. On this occasion, the supervisor did not observe any adverse affect on the Individual. Tr. at 31. The supervisor did not have a chance to specifically observe the Individual at other social events with alcohol. Tr. at 37. However, he did not notice the Individual exhibiting erratic behavior. He testified that he however observed other employees at other social events exhibiting such behavior. Tr. at 38.

The DOE Psychiatrist was given an opportunity to testify after hearing all of the testimony presented by the Individual. He testified that none of the evidence presented by the Individual was sufficient to require that he modify his opinions given in the Report or in his testimony. Tr. at 199.

At the Individual's request, I kept the record open in this matter so that he could submit results from his most recent evaluation for substance abuse. *See* Tr. at 204. After the hearing the Individual submitted another letter from a counselor (Counselor Letter 2). Ind. Ex. F. The letter stated that the Individual was administered another SASSI test and that the results of the test indicated that the Individual had a "low probability of having a substance dependence disorder." Ind. Ex. F. I gave the DOE Counsel in this matter additional time to provide a response.

In his response to Counselor Letter 2 (Response), the DOE Counsel submitted a statement from the DOE Psychiatrist who had an opportunity to examine Counselor Letter 2. The DOE Psychiatrist opined that Counselor Letter 2 "did not relieve concerns that the subject has a probability of future alcohol abuse." June 24, 2009 Response (Response) Attachment 2 at 2. He went to state that it would be "more helpful" to have a qualified mental health specialist document appropriate use of alcohol over the past 24 months. Further, the evaluation should consider the Individual's past history of substance abuse and relapse after treatment. Response Attachment 2 at 2.

After considering all of the evidence in the record, I cannot find that the Individual has presented sufficient evidence to resolve the security concerns raised by the DOE Psychiatrist's diagnosis of Alcohol Abuse. I note that the Individual has had a considerable period, approximately 23 months, without a alcohol-related incident. Nevertheless, I believe compliance with the longer trouble-free period specified by the DOE Psychiatrist, 36 months, would be required before I could find that the Individual has demonstrated adequate evidence of rehabilitation or reformation. I find it very significant that the Individual has a 20-year history of alcohol misuse, including periods as long as 5 years between alcohol-related incidents. He has already undergone several treatment programs and has relapsed into problematic alcohol consumption. Importantly, the Individual does not believe that he has a problem and as such lacks the element of insight that might provide additional assurance that future bouts of intoxication will not occur.

I recognize the care which the Individual has taken to avoid future drinking and driving episodes. However, the security concerns are not exclusively related to the DUI arrests. As mentioned above, the security concern associated with alcohol misuse comes any time a security holder becomes intoxicated. The Individual has pointed out that he has changed considerably since 1997. The record shows that the number of alcohol-related offenses has decreased since that date. However, the Individual nevertheless had two alcohol-related arrests during the period 1998-2007 (one arrest in 2003 and another in 2007). Even if I assume that the Individual has improved regarding his responsible use of alcohol, the fact that he had an arrest as recent as 2007 gives proof that the Individual's problem is on-going and that the security concerns are still very real.

The submission of Counselor Letter 2 also fails to convince me that the security concerns caused by the Individual's alcohol use are resolved. I find the DOE Psychiatrist's testimony more convincing, especially since it is apparent that he had access to significant evidence regarding the Individual's full background and history. I also find that the DOE Psychiatrist's "correction" of the SASSI results were based upon reasonable factual evidence, although I offer no opinion as to the clinical "propriety" of such a correction. The fact that the Individual's Counselor administered the SASSI and it gave rise to a different assessment as to the probability of the Individual having a substance abuse disorder does not outweigh the other evidence in the record of this case. Counselor Letter 2 only gives the result of the SASSI and does not provide any further analysis of the Individual's current condition. In sum, I find that the evidence that the Individual has presented does not resolve the security concern raised by the DOE Psychiatrist's Report and testimony indicating that the Individual has a diagnosis of Alcohol Abuse in remission.

B. Criterion L

The Criterion L derogatory information in this case centers around the numerous criminal charges and arrests that have been made regarding the Individual as well as his deliberate refusal to attend substance abuse treatment while in the military in order to obtain his discharge from the service. Criminal activity creates doubt as to a person's judgment, reliability and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules or regulations. DOE Adjudicative Guideline J.¹¹ Given the number of criminal arrests the Individual has been subject to, the LSO had significant grounds to invoke Criterion L.

The Individual's two witnesses testified as to the Individual's honesty and trustworthiness. The Individual's friend testified that he believes that the Individual is an "honest and forward" person. Tr. at 13. Further, he does not believe that the Individual would disclose classified information. Tr. at 14. The Individual's supervisor also testified as to his belief as to the Individual's honesty and that the Individual had been placed in a position of responsibility on an employee safety team. Tr. at 31, 33. He has never known the Individual to lie, cheat or steal. Tr.

¹¹ Specifically, the Guideline states:

Criminal activity creates a doubt a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws rules and regulations.

at 33. The supervisor also testified as to the Employee's excellent performance (described as "invaluable") as a lead for a readiness assessment. Tr. at 33.

In his own testimony, the Individual described the positions of trust he has held and specifically his duties while in the military regarding the protection of nuclear materials. Tr. at 158. He prides himself on his qualities of "honesty, integrity, and loyalty to my friends and family and definitely to my country." Tr. at 158. He also testified as to his efforts three years ago in disclosing to postal authorities a scheme involving forged United States Postal Service money orders. Tr. at 158-59. He believes that this incident is particularly reflective of his honesty since he could have cashed the money order with little difficulty. Tr. at 159.

In considering the Criterion L derogatory information, I find that the non-alcohol related arrests occurred some 20 years ago while the Individual was a young man. I find that the passage of time for these arrests, as well as for the Individual's refusal to attend treatment in order to obtain a military discharge, has mitigated the security concerns raised by these incidents. Nevertheless, this mitigation is outweighed by the Individual's significant 20-year history of alcohol-related arrests. Given my finding that the Individual has not demonstrated sufficient rehabilitation or reformation from his alcohol misuse, I cannot find that the Individual has resolved the Criterion L concerns raised by these arrests. Further, the Individual's use of alcohol despite being barred from such use while on probation for the 2007 DUI is a serious failure of judgment and reliability. Given the Individual's unresolved, even if infrequent, pattern of alcohol-related arrests, I cannot find that the Criterion L concerns as to his trustworthiness and reliability have been resolved.

C. Criterion F

The deliberate withholding of significant information raises serious issues with regard to the individual's honesty, reliability and trustworthiness. This is especially so in the case of Criterion F. Criterion F describes information relating to the misrepresentation, falsification or omission of significant information from a Questionnaire for Sensitive Positions or similar documents pertaining to the determination of a person's fitness to hold or retain a clearance. The DOE security program is based on trust, and when a security clearance holder breaches that trust by misrepresenting, falsifying or omitting information, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing, Case No. TSO-0374, slip op. at 7 (February 1, 2007); Personnel Security Hearing, Case No. TSO-0361, slip op. at 7 (October 6, 2006); Personnel Security Hearing, Case No. VSO-0281, (November 2, 1999).* The Criterion F derogatory information in this case involves the Individual's response to Question 23d in the QSP form he completed in September 2007 as part of the process to obtain a clearance. Ex. 9. Question 23d asks an applicant to list all of his or her alcohol or drug-related arrests. The Individual listed only his 2007 DUI arrest. Ex. 4 at 9. When asked about this omission in the PSI, the Individual stated that he believed the question only referred to such arrests in the past 10 years. Ex. 4 at 59-60. He went on to explain that at the same time he completed the QSP he also was in the process of completing other forms which asks a similar question with a 10-year cutoff. Ex. 4 at 60. Further, he claimed that he listed all of his arrests on the other forms he completed. Ex. 4 at 60.

At the hearing, the Individual denied any intent to deceive the LSO about his arrest record by virtue of his answer for Question 23d. The Individual explained his answer as follows

In the SF-86 Form, I was asked, under questions 23D, if I'd ever had any charges related to drugs or alcohol, and I honestly -- maybe I wasn't reading it clear enough.

I looked at this great big pile of all these papers I had to fill out and was just -- I kind of briefly read through all of them to get an idea of what I needed to get clear in my head. And somewhere on that form, it said ten or seven years or something, and I was thinking, well, maybe this is like just an initial little thing that they can run through the system and then -- because I saw all the stuff behind it, and then this is the detailed kind of version.

I just -- I wouldn't -- I wouldn't lie on -- I wouldn't lie on one page and then show the derogatory information on the other.

Tr. at 170.

I held the record open in this matter for the Individual to submit copies of the additional forms he claimed to have filled out along with the QSP. The Individual submitted a copy of a "Security Supplement" form dated August 2007.¹² On the second page of the form, the Individual listed information about DUI arrests in 1987, 1991, 1992, 1994, 1997, 2003 and 2007 as well as his military offenses. Ind. Ex. G. He also disclosed his history of marijuana use in this form.¹³ *See* Comments on Additional Evidence and Closing Argument, Dated June 24, 2009 (Comments), Attachment 1. The form also states that any information contained on the form may be shared with "DOE personnel." Ind. Ex. G at 2.

In response, DOE Counsel obtained, from the Individual's employer, another form titled "[DOE Facility Name] Employment Suitability Questionnaire" (ESQ) which was signed by the Individual on the same date in September 2007 that he signed the QSP. In this form, the Individual lists the majority of his arrests but does not lists his arrests in 1994 and 2007 for DUI or his 2003 arrest for Disturbing the Peace. DOE Counsel argues that the fact the ESQ, submitted after the Security Supplement form, contained omissions as to his criminal history negates any argument that the Individual's failure to completely answer the QSP's Question 23d was unintentional. Comments at 3-4.

Given the evidence before me I find that the Individual has resolved the security concerns raised by his omissions in Question 23d. The Individual's contemporaneous detailed criminal arrest disclosures on both the Security Supplement form and the ESQ make it unlikely that the Individual intended to deliberately hide his arrest record by omitting various arrests in Question 23d. While the Individual's answers in the ESQ do omit three arrests, the Individual's prior responses in the Security Supplement form discloses these arrests. I believe that the Individual has submitted sufficient evidence for me to conclude that his omissions in Question 23d were not intentional and thus the Criterion F security concerns have been resolved.

¹² Security Supplement forms are forms used by contractors. These forms are not usually provided to the LSO. *See* Tr. at 97 (testimony of Personnel Security Specialist).

¹³ The Individual's marijuana use was not cited as a security concern in the Notification Letter.

VI. CONCLUSION

As explained above, I find that the security concerns under Criterion F have been resolved. However, the security concerns under Criteria J and L have not been resolved. Thus, I cannot conclude that granting the Individual 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 should not be granted access authorization. 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: July 13, 2009