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September 24, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Filing Date: June 2, 2009

Case Number: TSO-0763

This Decision considers the eligibility of XXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As I explain below, the Department of Energy (DOE) should not grant the individual an access authorization.

I. Background

In the late 1960's, the individual began using illegal drugs. DOE Exh. 5 at 19, 22 (Personnel Security Interview [PSI], Aug. 19, 2008).

In 1973, the individual pled guilty to aggravated commercial burglary. DOE Exh. 28 (DOE Case Eval., Aug. 26, 2008). As the individual was caught stealing from a store, he was armed and intoxicated. DOE Exh. 3 at 10, 11 (Eval. Report of DOE-Consultant Psychiatrist, Dec. 6, 2008).

In 1977, the individual received an access authorization after having signed a DOE Drug Certification. DOE Exh. 29 (DOE Case Eval., Feb. 9, 2009). By signing the DOE Drug Certification, the individual promised not to use illegal drugs while holding an access authorization. DOE Exh. 9 (Hearing Officer's Decision, Aug. 14, 1992).

In 1983, the individual's access authorization was terminated because he took a leave of absence. DOE Exh. 29 (DOE Case Eval., Feb. 9, 2009). He had also been arrested for an alcohol-related assault and battery. DOE Exh. 3 at 4 (Eval. Report of DOE-Consultant Psychiatrist, Dec. 6, 2008).

In 1984, at a PSI, the individual denied using illegal drugs after signing his DOE Drug Certification. DOE Exh. 8 (Statement of Charges, Apr. 1, 1992). The individual also denied having been arrested for driving while intoxicated (DWI). DOE Exh. 3 at 4 (Eval.

Report of DOE-Consultant Psychiatrist, Dec. 6, 2008). By then, he had had at least two arrests for DWI. *Id.*

In 1985, the individual's access authorization was reinstated. DOE Exh. 29 (DOE Case Eval., Feb. 9, 2009).

In 1985 and 1987, the individual again denied using illegal drugs after signing his DOE Drug Certification. DOE Exh. 8 (Statement of Charges, Apr. 1, 1992).

In 1991, at a PSI, the individual admitted that he used illegal drugs after he signed his DOE Drug Certification, and his access authorization was suspended. *See id.*; DOE Exh. 29 (DOE Case Eval., Feb. 9, 2009). The Local Security Office (LSO) issued him a statement of charges alleging that he suffered from Alcohol Abuse and that he had violated his DOE Drug Certification. DOE Exh. 8 (Statement of Charges, Apr. 1, 1992).

At a hearing in 1992, he said that in 1991, when he had admitted using illegal drugs after signing his DOE Drug Certification, he was "lying." He also said that he told the PSI interviewer only that it was "possible" that he had used illegal drugs after signing a DOE Drug Certification. DOE Exh. 9 at 8-9 (Hearing Officer's Decision, Aug. 14, 1992). A Hearing Officer concluded, "The entire record evidences that [the individual] did use marijuana and cocaine up until . . . 1987. [The individual's] admissions are clear and plain. His explanations are evasive and equivocal." *Id.* at 13. Therefore, the individual "violated a Drug Certification he signed [in] 1977." *Id.* at 11.

In 2002, an Employee Assistance Program (EAP) counselor interviewed the individual about his use of illegal drugs. The individual told him that he had never used illegal drugs. DOE Exh. 3 at 10, 11 (Eval. Report of DOE-Consultant Psychiatrist, Dec. 6, 2008). He later said, "I can't tell you why I would not have admitted that." *Id.* at 10.

In 2006, an access authorization was requested for the individual. DOE Exh. 29 (DOE Case Eval., Feb. 9, 2009).

In August 2008, at a PSI, the individual stated that he had not used illegal drugs between 1977 and the early 1990's. DOE Exh. 5 at 22, 24, 27 (PSI, Aug. 19, 2008).

In March 2009, the LSO issued the individual a Notification Letter with a Statement of Charges that cites a Criterion J security concern. DOE Exh. 1 (Notification Letter and Statement of Charges, Mar. 19, 2009). Criterion J includes habitually using alcohol to excess or being 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). The LSO alleges that:

- 1) Since 1987, the individual has attended five alcohol treatment programs and has relapsed each time;

- 2) In December 2008, a DOE-consultant psychiatrist evaluated the individual. He concluded that the individual met the criteria for Alcohol Dependence in full, sustained remission. However, there is not adequate evidence of rehabilitation and reformation. The individual's abnormally elevated liver enzymes raise the suspicion that he continues to drink; and
- 3) The individual has not been in treatment for over two years, which reduces his support for maintaining sobriety.

DOE Exh. 1 (Notification Letter and Statement of Charges, Mar. 19, 2009).

The Statement of Charges also cites a Criterion L security concern. Criterion L includes "unusual conduct" and "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. Such conduct or circumstances include . . . violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l). The LSO alleges that:

- 1) In 1991, the individual's access authorization was suspended in part due to concerns with alcohol and related arrests;
- 2) In 1993, after an administrative review hearing, the individual resolved concerns about his drinking and alcohol-related arrests. Yet, he was arrested for DWI in 1994, 1996, and 1999. The 1999 arrest included charges of Open Container and the felony Great Bodily Harm;
- 3) In 1993, after an administrative review hearing, the individual's access authorization was revoked because he did not resolve the security concern stemming from his violation of a DOE Drug Certification. Yet, he used marijuana from 1993 to 1995;
- 4) In December 2008, a DOE-consultant psychiatrist reported that the individual's history of falsifying his problems with alcohol and illegal drugs diminishes his assertions of sobriety;
- 5) The individual's abnormally elevated liver enzymes raise the suspicion that he continues to drink; and
- 6) The individual used illegal drugs after signing a DOE Drug Certification and while holding a DOE access authorization. After his access authorization was revoked, from 1993 to 1995 he continued to use illegal drugs.

The individual requested a hearing to respond to the LSO's security concerns, and I conducted the hearing on July 23, 2009. The individual represented himself. The

individual testified and called the following witnesses: his wife, his daughter, his niece, his brother in-law, his friend, his family friend, and the EAP counselor. The DOE counsel called the DOE-consultant psychiatrist. At the hearing, the individual stated that he does not dispute the truth of the allegations in the Statement of Charges, except that he has rehabilitated and reformed himself from his diagnosis of Alcohol Dependence. Tr. at 6-7.

II. Summary of Hearing Testimony

A. The Individual

The individual testified that he began drinking in high school, in the late 1960's. *Id.* at 48-49. His drinking "put a lot of stress" on his marriage and family. *Id.* at 33. He had previously abstained for periods of two and five years, but always relapsed. *See id.* at 43.

In October 1999, the individual's "life came crashing down." *Id.* at 17. He became intoxicated, crashed his car, and seriously injured someone. Meanwhile, his mother was dying. He said, "I hit my bottom." *Id.* at 17, 18.

After the car crash, the individual was ordered to undergo a 30-day psychiatric evaluation at a secure facility and was ordered to undergo one year of intensive outpatient treatment. *Id.* at 18. He also participated in Alcoholics Anonymous (AA) for a year. (His last formal treatment and AA participation was in 2004. *Id.* at 41, 55.) The individual realized that "drinking was the cause" of his "problems." He "made an oath" to his mother to "straighten out" his life and "give up drinking." *Id.* at 18. His mother passed away in December 1999. *Id.* at 42.

During the individual's psychiatric evaluation at the secure facility, he developed a "five-point plan" to replace drinking with "positive things" to re-earn the respect of his family. *Id.* at 19. The plan includes his sobriety, spirituality, home life, work, and education. He views the points as "synergistic" and "inner-related." *Id.* at 20.

The individual completed some of the 12 steps of AA. *Id.* at 22. He realized that he is "powerless" and made "amends." He also conducted a "fearless and moral inventory" and realized that "personality defects" caused his drinking. *Id.* at 21, 22. His self-esteem depended on whether others accepted him. The individual "realized" that he "could like [himself]," that he "was a worthy person," that he "had things to offer," and that "other people were not in charge of [his] self-esteem." Therefore, he "no longer needed the crutch of alcohol." *Id.* at 21. The individual had his last drink in January 2000. *Id.* at 16.

The individual began a new career, and he became an instructor at a local community college. *Id.* at 29, 30. He also volunteers with the local school district and community committees. *Id.* at 30. He tries to "be an example" for his own family, but also his mother and father, "who were very involved." *Id.* at 31. He keeps his finances "in order." *Id.* at 39.

The individual craves alcohol because “an alcoholic always craves alcohol.” He said, “I recognize it for what it is, and it’s a fleeting moment.” *Id.* He realized that he cannot drink occasionally. *Id.* at 44.

For support, the individual turns to his family. *Id.* at 29. His family life has improved. *Id.* at 34. Seven years ago, his wife gave up drinking to support him. *Id.* at 63. He and his wife now get along much better, travel, and share interests and goals. He said, “Everyone has their bad days, but we don’t have any issues like we used to.” *Id.* The family “does a lot of things together,” including horse back riding and camping. *Id.* at 35. Some family members drink, although the individual does not provide alcohol. *Id.* at 63-64.

For support, the individual also turns to his religious brotherhood. (He substitutes his brotherhood for AA. *Id.* at 51.) He joined in 2005 to fuel his “inner spirituality.” *Id.* at 25. The brotherhood prays often and educates him in his language and culture. It has also “taken on community responsibilities.” *Id.* at 27. Staying “in touch” with his “faith and spirituality” helps him stay sober. The brotherhood also gives him “something . . . to be spoken well of.” *Id.* at 28.

The individual sought out a counselor, but the counselor said it was “unethical” to treat him because he did not “display the symptoms” of alcoholism. *Id.* at 33. He has not continued with AA. *Id.* at 37.

The individual blamed his past falsification on his “memory.” *Id.* at 38. He said, “When you’re drinking you’re in a fog. You can’t remember one day to the next. . . . And maybe in some instances . . . I knew that if I were to be honest it would work against me, so I was thinking that maybe I was smarter than other people, or hoping that I was luckier than other people.” *Id.* He was then asked on which occasions he had been dishonest. He stated that “the only one that comes to mind” is when he had reported his arrest for selling alcohol to a minor and failed to report that he was also found with cocaine. *Id.* at 66-67.

The individual reflected on his drinking. He said, “[F]or the most part, other than the legal matters, I wasn’t a bad drunk. . . . I’m very introspective. . . . I got in trouble driving when I was drinking, and I drank to excess. . . . I didn’t have any fights or breaking stuff or hitting people or stealing. . . . I was bothered by things, and so when I drank I went inside and I was quiet and I just drank until I couldn’t think anymore.” *Id.* at 33-34.

The individual last used illegal drugs in the “early 1990’s.” *Id.* at 60. He said, “It’s been so long, I don’t know.” *Id.* at 60-61.

B. The Individual’s Wife

The individual’s wife testified that she and the individual have been married for 34 years. *Id.* at 106. Alcohol caused trouble in their marriage, and she thought of divorce. *Id.* at

111. The individual “hit bottom finally.” *Id.* at 107. He did a “stint” in the psychiatric center. His mother’s passing “was a very major impact in his life.” She said, “And he did promise her that he would sober up.” *Id.*

The individual has been sober since 2000. *See id.* at 106-07. They “have a very good relationship.” He spends time with their family, and “he works really hard.” He is committed to his education, his religious brotherhood, and “community [activities].” *Id.* “[H]is confidence is up.” *Id.* at 107. Since he has been sober “for this length of time,” she believes that he will continue to abstain. *Id.* at 113.

The individual’s wife does not drink, and the individual and his wife do not keep alcohol in their home. *Id.* at 108, 109.

The individual attends his religious brotherhood weekly. *Id.* at 115. The religious brotherhood is “very strict,” and “they ban alcohol.” *Id.*

The individual last used illegal drugs in perhaps 1995 or 1996. *Id.* at 118.

C. The Individual’s Daughter

The individual’s daughter testified that when she was 18, she moved away because the individual drank too much. *Id.* at 85. She has since moved back with her children, and they see the individual every weekend. He no longer drinks because he is focused on church and family. Although he was not truthful while he was drinking, he is now truthful. *Id.* at 87. She said, “He’s a different person. I’ve got my father back.” *Id.* at 85. She does not believe that he will drink again. *Id.* at 87.

At family events, alcohol is sometimes served, but the individual does not drink. *Id.* at 86, 87. She has never seen him use illegal drugs. *Id.* at 88.

D. The Individual’s Niece

The individual’s niece testified that his father was “very verbally abusive.” *Id.* at 94. The individual now “understands that he doesn’t need my grandfather’s validation to be a good person.” *Id.*

The individual and his niece have always been close. *Id.* at 91. Since 2000, she has “seen a big difference.” He stopped his drinking and “associated” problem behavior, such as arguing with his wife. *Id.* at 91. She said, “[H]e needed to make changes for himself to be able to better his family.” *Id.* at 92. He now hosts family events on holidays and special occasions. Others may drink, but he does not. *Id.* at 91. She would notice if he had been drinking. *Id.* at 95.

The individual is deeply involved in his religious brotherhood, which supports him. *Id.* at 94. They pray often, “help each other through hard times,” and do not allow drinking. *Id.* at 91.

E. The Individual's Brother In-Law

The individual's brother in-law testified that he and the individual were friends before they married into the same family. *Id.* at 68.

The individual and his brother in-law discuss the problems that alcohol has caused the individual. *Id.* at 69. They also discuss the individual's "relationship" with "God" and how that can help him abstain. *Id.*

The individual and his brother in-law both attend family events where alcohol is served, and he does not see the individual drink. *Id.* at 70. Nor has he heard family members mention that the individual has been drinking. *Id.* The individual's brother in-law does not believe that the individual has had alcohol after January 2000. *Id.* at 68-69.

F. The Individual's Friend

The individual's friend testified that he has known the individual since they were in junior high – about 45 years. *Id.* at 73. They "used to pal around together," and the individual's friend participated in his wedding. They "still get together . . . once in a while." *Id.*

The individual's friend has not seen the individual drink "in a long time," perhaps since January 2000. *Id.* at 73. The individual's friend has recently held gatherings at his house. Alcohol was served, but the individual did not drink. *Id.* at 73-74, 76. The individual recently hosted a family event. The individual did not provide alcohol. Those who drank brought their own alcohol. *Id.* at 79.

The individual's friend is not aware that the individual has ever used illegal drugs. *Id.* at 77.

The individual is dedicated to finishing school, teaching, and family. *Id.* at 74. The individual also attends policy meetings for the school board. *Id.* at 76.

The individual's friend is a member of the same religious brotherhood as the individual, although he belongs to a different chapter. *Id.* at 79, 81. The chapters sometimes hold events together. The individual is "a member in good standing" of his chapter. If he had been drinking, they would have revoked his membership. *Id.* at 81.

G. The Individual's Family Friend

The individual's family friend testified that he has known the individual's family for 47 years. *Id.* at 100. He "grew up" with the individual, his mother, his father, and his siblings. *Id.*

The individual's family friend attends four or five of the individual's family events every year. *Id.* at 102. Alcohol is present, but the individual has not had a drink in 10 years. *Id.* at 101, 102. He is not aware if the individual has ever used illegal drugs. *Id.* at 102.

H. The EAP Counselor

The EAP counselor testified that he provides mental health counseling for employees who use drugs and alcohol. *Id.* at 121. The individual asked him for advice for handling the administrative review process; they did not form a therapeutic relationship. *Id.*

The EAP counselor believes that the individual has abstained. *Id.* at 130. His "borderline elevated" liver enzymes do not necessarily indicate that he has been drinking. *See id.* at 125-26. The individual may have damaged his liver so that his liver enzymes are always up. *Id.* at 126. If he were drinking enough to keep his enzymes elevated, his drinking would have caused him legal trouble or trouble at home, work, school, or in the community. *Id.* If he had one drink, he would be "back off to the races." He said, "[T]he true alcoholic . . . [cannot] be a controlled drinker." *Id.* at 127. He was not "slick" enough to hide his drinking before, so he probably could not do so now. *Id.* at 135.

The individual's abstinence, his year of intensive outpatient treatment, and his support network constitute adequate evidence of rehabilitation and reformation. *Id.* at 147.

A strong social support system is one of the most important contributors to long-term abstinence. *Id.* at 133. The individual has an adequate support system to maintain his abstinence. *Id.* at 134, 35. Therefore, his "prognosis is good." *Id.* at 139. His risk of relapse is "low." *Id.* at 148.

To treat an alcoholic, a therapist must diagnose him or her with an alcohol use disorder. *Id.* at 129. Because the individual's therapist could not diagnose him with an alcohol use disorder, she appropriately declined to treat him. *Id.*

I. The DOE-Consultant Psychiatrist

The DOE-consultant psychiatrist testified that when he evaluated the individual in December 2008, he concluded that the individual had not shown adequate evidence of rehabilitation and reformation. The individual's liver enzymes were abnormally elevated. *Id.* at 162. Although the individual's diabetes could have raised his enzymes, the DOE-consultant psychiatrist suspected that his drinking raised them because the individual has "a horrible track record" of providing false information about his drinking. *Id.* at 150, 151, 156.

The individual has now shown adequate evidence of rehabilitation and reformation. *Id.* at 170. His liver enzymes were elevated in the 1980's and 1990's, when he admitted to drinking heavily. *Id.* at 161. After he quit drinking in 2000, they went "way down," and they were stable from 2003 to 2007. Although they were elevated at the time of the

DOE-consultant psychiatrist's evaluation in 2008, a 2009 test by a different lab showed similar enzyme levels, which fell within a "normal" range on a different scale. The DOE-consultant psychiatrist now believes that his liver enzymes do not indicate a drinking pattern. *Id.* at 163.

Further, the DOE-consultant psychiatrist does not suspect that the individual has been drinking. *Id.* at 165. He agreed with the EAP counselor that if the individual had suffered a relapse, he would have not been able to control his drinking or hide it. *Id.* at 153. The fact that the individual's problems ended in 2000 suggests that he has abstained since then. *Id.*

The individual's "prognosis" is "fair to good," and his risk of relapse is "low to medium." *Id.* at 166. His religious brotherhood supports his sobriety, as does his year of intensive outpatient treatment. *Id.* at 154-55, 166, 170.

III. Legal Standard

In order to grant or restore an individual's access authorization, the Hearing Officer must find that the grant or restoration "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a); *see also Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988). In order for the Hearing Officer to make this finding, the individual must resolve the security concerns that the DOE identifies in its Notification Letter. *See, e.g., Personnel Security Hearing*, Case No. TSO-0586 (2008).¹

The individual must resolve the DOE's security concerns by presenting evidence to rebut, refute, explain, extenuate, or mitigate the allegations supporting the DOE's security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0598 (2008). The individual must present corroborating evidence to support his or her efforts to resolve the DOE's security concerns. *See Personnel Security Hearing*, Case No. TSO-0693 (2009).

The individual has the burden to resolve the DOE's security concerns because once the DOE finds a security concern, "[T]here is a strong presumption against granting a[n access authorization]." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). "[D]eterminations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see also* 10 C.F.R. § 710.7(a) ("Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.").

The Hearing Officer considers "all relevant information, favorable and unfavorable," to issue a decision that is "a comprehensive, common-sense judgment." 10 C.F.R. § 710.7(a). The Hearing Officer shall consider the following factors: witness demeanor and credibility; the authenticity and accuracy of documentary evidence; the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to

¹ OHA decisions may be accessed by entering the case number in the search engine on the OHA website, www.oha.doe.gov.

include knowledge and participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavior changes; the motivation of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *Id.* at §§ 710.7(c), 710.27(a)-(b).

IV. Analysis

Criterion J

The LSO's Criterion J security concern stems from (i) the DOE-consultant psychiatrist's 2008 opinion that while the individual's Alcohol Dependence is now in full, sustained remission, the individual has not shown adequate evidence of rehabilitation and reformation – his elevated liver enzymes suggest that he still drinks; (ii) since 1987, the individual has entered treatment five times, but has relapsed each time; and (iii) the individual has not entered treatment in over two years. I find that the individual has resolved the Criterion J security concern.

At the 2009 hearing, the DOE-consultant psychiatrist and the EAP counselor agreed that the individual has shown adequate evidence of rehabilitation and reformation. In 1999, the individual suffered an alcohol-related accident that prompted him to abstain and rebuild his life. He acknowledged his drinking problem and identified the difficulties with his father as the cause of his drinking. He also completed his education, improved his family life, and become a leader in his religious brotherhood and school district. All witnesses agreed that the individual has abstained since January 2000. The EAP counselor testified that he has a good prognosis, while the DOE-consultant psychiatrist testified that he has a "fair to good" prognosis. Both agreed that he has an adequate support network.

The DOE-consultant psychiatrist testified that the individual's elevated liver enzymes, taken in context with a more recent test, do not suggest that he has been drinking. The DOE-consultant psychiatrist also acknowledged that the individual consulted a therapist, but the therapist advised him that he does not need treatment because he does not suffer from an alcohol diagnosis.

Criterion L

The LSO's Criterion L security concern stems from (i) the individual's alcohol consumption, his abnormally elevated liver enzymes, and his alcohol-related legal trouble; (ii) the individual's violation of his DOE Drug Certification; (iii) his continued use of illegal drugs; and (iv) his history of falsifying his use of alcohol and illegal drugs, which diminishes his credibility.

First, I find that the individual has resolved the portion of the Criterion L security concern stemming from his alcohol consumption, his abnormally elevated liver enzymes, and his

alcohol-related legal trouble. By resolving the LSO's Criterion J security concern, the individual has also resolved this portion of the Criterion L security concern.

Second, I find that the individual has not resolved the portion of the Criterion L security concern stemming from the violation of his DOE Drug Certification. A DOE Drug Certification represents a commitment from an individual that he or she will not use illegal drugs, which the DOE relied upon in granting the individual an access authorization. When an individual violates a DOE Drug Certification, they raise a concern about their reliability. An individual's untrue or inconsistent statements about their use of illegal drugs also raise a concern about their reliability. Previous Hearing Officers have denied recommending an access authorization to individuals who had violated a DOE Drug Certification and who had a long-term pattern of lying or making inconsistent statements about their history of illegal drug use. *See, e.g., Personnel Security Hearing*, Case No. TSO-0216 (2005) (inconsistent statements), *Personnel Security Review*, Case No. VSA-0255 (1999) (long-term pattern of dishonesty).

The individual has an extensive history of making conflicting statements about his use of illegal drugs. Three times in the 1980's, the individual denied using illegal drugs after signing his 1977 DOE Drug Certification. In 1991, he admitted having done so, and in 1992, a Hearing Officer found that the individual had violated his DOE Drug Certification. In 2002, he denied ever having used illegal drugs. At the 2008 PSI, he admitted having used illegal drugs, but not having used them while holding an access authorization. At the 2009 hearing, by stipulating that he had violated his DOE Drug Certification, he admitted that he had used illegal drugs while holding an access authorization.

Because the individual has a long-term pattern of making inconsistent statements about his use of illegal drugs – including the conflict between his statement at the 2008 PSI and his stipulation at the 2009 hearing – I cannot find that he has resolved the portion of the security concern stemming from the violation of his DOE Drug Certification.

Third, I find that the individual has resolved the portion of the Criterion L security concern stemming from his continued use of illegal drugs. The individual testified that he has not used illegal drugs since 1995 or 1996, and his witnesses corroborated his testimony.

Fourth, I find that the individual has not resolved the portion of the Criterion L security concern arising from his history of falsifying his use of alcohol and illegal drugs. In addition to the inconsistent statements summarized above, in 1984 the individual denied having been arrested for DWI, despite having been arrested for DWI twice. At the 2009 hearing, the individual stated that he had never fought or stolen anything while intoxicated. The individual's history shows an arrest for burglary and an arrest for assault and battery, which both occurred while he was intoxicated.

The individual and his witnesses testified that the individual has improved his candor. Yet, the individual has made conflicting statements for 25 years. Moreover, he has done

so after he began to rebuild his life in 2000 and during the recent PSI and hearing, which were designed to allow him the opportunity to demonstrate his trustworthiness and candor.

V. Conclusion

The individual has resolved the LSO's Criterion J security concern. However, because the individual has not resolved the Criterion L security concern, I find that the DOE should not grant him an access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

David M. Petrush
Hearing Officer
Office of Hearings and Appeals

Date: September 24, 2009