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October 21, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: June 3, 2009

Case Number: TSO-0765

This Decision concerns the eligibility of XXXXXX X. XXX (hereinafter referred to as "the Individual") to maintain a security clearance under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's security clearance should not be restored.

**I. BACKGROUND**

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. Specifically, the LSO characterized this information as indicating that the Individual had (1) engaged in unusual conduct which brought her honesty, trustworthiness, and reliability into question, and (2) been diagnosed with alcohol dependence by a licensed clinical psychologist, who opined that this illness or mental condition causes, or may cause, a significant defect in the Individual's judgment or reliability.<sup>1</sup>

The Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for a DOE security clearance. The Individual filed a Response to the Notification Letter and requested a

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<sup>1</sup> The Notification Letter alleges that the Individual has: (1) "Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse," 10 C.F.R. § 710.8(j); (2) "An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability," 10 C.F.R. § 710.8(h); and (3) "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

hearing. The LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA) and the OHA Director appointed me as the Hearing Officer in this matter on June 6, 2009.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, her son, and the DOE Psychologist. *See* Transcript of Hearing, Case No. TSO-0765 (hereinafter cited as "Tr."). The LSO submitted 17 exhibits, marked as DOE Exhibits 1 through 17, while the Individual submitted 15 exhibits, marked as Individual's Exhibits 1 through 15.

## II. FINDINGS OF FACT

On February 20, 2008, a psychiatric hospital (the Hospital) admitted the Individual for alcohol detoxification. The Hospital's medical staff diagnosed the Individual with alcohol withdrawal<sup>2</sup> and alcohol dependence. A progress note dated February 22, 2008, notes that the Individual was expressing cravings for alcohol and stated, "I just want to drink." The Individual was prescribed medication in order to control her cravings for alcohol. The Hospital staff also conducted regular safety checks on the Individual. After seven days, her detoxification was complete and she was transferred to rehabilitation. The progress notes indicate that the Individual and her therapists agreed that she should undergo a relapse prevention program.

On March 2, 2008, the Individual reported to the Hospital staff that, prior to her admission, her husband pulled out his gun and threatened to kill her and himself, if she did not hospitalize herself in order to treat her alcoholism. The Individual expressed anxiety about leaving her children with her husband. The Hospital staff advised the Individual to consider alternative

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<sup>2</sup> The Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR) provides the following diagnostic criteria for alcohol withdrawal:

- A. Cessation of (or reduction in) alcohol use that has been heavy and prolonged.
- B. Two (or more) of the following, developing within several hours to a few days after Criterion A:
  - (1) autonomic hyperactivity (e.g., sweating or pulse rate greater than 100)
  - (2) increased hand tremor
  - (3) insomnia
  - (4) nausea or vomiting
  - (5) transient visual, tactile, or auditory hallucinations or illusions
  - (6) psychomotor agitation
  - (7) anxiety
  - (8) grand mal seizures
- C. The symptoms in Criterion B cause clinically significant distress or impairment in social, or occupational areas of functioning.
- D. The symptoms are not due to a general medical condition and are not better accounted for by another mental disorder.

living arrangements for her and her children.<sup>3</sup> The Individual discharged herself on March 3, 2008, in order to attend to a crisis involving her son and to ensure that her nine year-old daughter was safe. The Individual did not report this hospitalization to the LSO as required.

The Individual's husband moved out of the family home and filed for divorce. On March 17, 2008, the LSO received a telephone call from the Individual's estranged husband. The estranged husband reported a large volume of alleged derogatory information concerning the Individual. Among the derogatory information alleged by the Individual's estranged husband was his report that the Individual had been hospitalized for treatment of substance abuse.

### **The PSIs**

After receiving the estranged husband's allegations, the LSO conducted two Personnel Security Interviews (PSI) of the Individual. The first PSI was conducted on May 20, 2008, (hereinafter the "first PSI") and the second PSI was conducted on August 19, 2008, (hereinafter the "second PSI").<sup>4</sup>

During the first PSI, the Individual stated that she no longer consumes alcohol and plans to permanently abstain from using alcohol. DOE Exhibit 14 at 15-16, 96. At the time of the first PSI, the Individual had attended some Alcoholics Anonymous (AA) meetings and started working the 12-Step program. *Id.* at 48-49, 90. She explained that she did not quit drinking because she is an alcoholic, but rather because she did not want to end up like her father: an alcoholic who committed suicide. *Id.* at 15. The Individual similarly indicated that she began working the 12-Step program because of her parents' alcoholism. Despite her claims that she discontinued using alcohol, her stated intention to abstain from future alcohol use, her attendance at AA meetings, and hospitalization for an alcohol-related disorder, the Individual repeatedly denied that she is an "alcoholic." *Id.* at 10, 14, 15.

The Individual confirmed at the first PSI that she had been hospitalized for alcohol rehabilitation. DOE Exhibit 14 at 8-9. However, the Individual claimed that she did not admit herself to the Hospital because she was an alcoholic, but rather because she was "afraid for her life." *Id.* at 21. According to the Individual, her husband insisted that she stop using alcohol when his doctors advised him to avoid using alcohol because of his diabetes. He therefore expected her to stop drinking in order to facilitate his own abstinence. *Id.* at 12.

Originally, the Individual had intended to receive her treatment on an outpatient basis. *Id.* at 86. However, on Monday, February 19, 2008, at her husband's suggestion, she agreed to inpatient treatment in order to save their marriage.<sup>5</sup> *Id.* at 68. Her husband met with a counselor from the

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<sup>3</sup> The Hospital staff also recommended that the Individual attend Alcoholics Anonymous (AA) meetings. Exhibit 14 at 47, 50.

<sup>4</sup> The transcript of the PSI conducted on May 20, 2008, appears in the record as DOE Exhibit 14. The Transcript of the PSI conducted on August 19, 2008, appears in the record as DOE Exhibit 13.

<sup>5</sup> The Individual subsequently stated that as a result of a conversation she had with her husband on February 18,

Hospital on February 19, 2008, and, according to the Individual, convinced the counselor that she was a “raging alcoholic.” *Id.* The Individual subsequently met with the counselor on February 19, 2008, and then had two 24-ounce cans of beer afterward. *Id.* at 68-69, 87.

The Individual claimed that, on February 20, 2008, she informed her husband that she had changed her mind and had decided against hospitalization. *Id.* Her husband reacted by getting a gun and threatening to kill both her and himself. *Id.* at 68-70. The Individual’s husband then allegedly physically attacked her. *Id.* at 71.

The Individual stated during the first PSI that the reason she was in the Hospital for “so long” was that she needed to undergo alcohol detoxification. *Id.* at 12-13. She claimed that a change in medications caused the symptoms that led the Hospital staff to diagnose her with alcohol withdrawal and dependence. The Individual reported that the Hospital staff discontinued her Attention Deficit Hyperactivity Disorder (ADHD) medication, Concerta, at the beginning of her hospitalization.<sup>6</sup> *Id.* at 13. The Individual also claimed that she had a severe reaction to Strattera, the drug the Hospital staff prescribed to replace the Concerta. *Id.* at 24.

When the Individual was asked during the first PSI why she failed to report her hospitalization to the LSO, she stated that she did not know that she was required to do so. *Id.* at 130. The Individual noted that she had reported her hospitalization to her management. *Id.*

During the second PSI, the Individual was asked to sign a “release of medical information” which would have enabled the LSO to obtain the Individual’s medical records directly from the Hospital. Exhibit 13 at 3. The Individual refused to sign this release. *Id.* The Individual offered to make selected portions of her medical records available to the LSO. *Id.* at 22. The interviewer repeatedly stated that the LSO needed complete records from the Individual’s hospitalization and needed the Individual to sign a release in order to ensure that the LSO was getting a complete copy of the records. *Id.* at 23. The Individual repeatedly refused to sign a medical release.

### **The Psychologist’s Evaluation**

At the request of the LSO, the Individual was evaluated by a DOE consultant psychologist (the DOE Psychologist) on October 20, 2008. The DOE Psychologist reviewed selected portions of the Individual’s personnel security file, interviewed the Individual, and administered standardized psychological tests to the Individual.<sup>7</sup> During the DOE Psychologist’s examination

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2008, she had decided that the relationship was over. *Id.* at 140-141.

<sup>6</sup> The Individual indicated that she had been seeing a psychologist and a psychiatrist for several years treating her ADHD. *Id.* at 45.

<sup>7</sup> Specifically, the DOE Psychologist administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Substance Abuse Subtle Screening Inventory III, Alcohol Use Disorders Identification Test, Connors Adult ADHD rating scale, and Symptom Checklist-90-R, to the Individual.

of the Individual, the Individual admitted that she still uses alcohol. DOE Exhibit 8 at 3. The Individual indicated that she intends to keep using alcohol in the future. *Id.* The Individual also informed the DOE Psychologist that she had greatly exaggerated her alcohol use to the intake counselor at the Hospital so that she would be admitted. The Individual wished to be admitted to the Hospital because she thought alcohol treatment would be like a vacation. *Id.* The DOE Psychologist also noted that the amount of alcohol that the Individual reported consuming on the night prior to her admission to the Hospital was “in excess of what is considered to be non-problematic drinking.” *Id.* at 13.

After completing her evaluation of the Individual, the Psychologist issued a report on November 4, 2008, in which she opined, in pertinent part:

[The Individual] continues to deny having an alcohol problem, and is fearful that she will lose her job if such a diagnosis is made. The truth about her alcohol use seems impossible to ascertain, given that she has admitted to drinking excessively, and then has recanted. She refused to release her complete medical file from her [hospital] stay, which would have included notes on her functioning once she was discharged from the detoxification unit, a Discharge Summary, and Discharge Diagnoses, and likely recommendations for further treatment. Her refusal to allow the DOE access to these records leads to the conclusion that she is trying to hide that information from the DOE. As far as this examiner has been able to ascertain, [the Individual’s] drinking has not interfered with her work, social functions, or relationships (aside from her ex-husband, who, by his actions, has to be considered an unreliable source). She therefore does not meet DSM-IV criteria for Alcohol Abuse. This examiner is not in possession of enough positive diagnostic symptoms to diagnose [the Individual] with Alcohol Dependence at this time, but she does meet criteria for Alcohol Withdrawal and Alcohol Dependence, by history.

DOE Exhibit 8 at 13-14. The DOE Psychologist further opined that the Individual is not rehabilitated or reformed from her alcohol dependence because she is still consuming alcohol. *Id.* at 14-15. Finally, the DOE Psychologist reported:

Her diagnosis of Alcohol Dependence from [the] Hospital was made in February 2008, and there is not enough evidence of rehabilitation or reform to mitigate this diagnosis. Evidence seems to indicate the presence of an alcohol disorder, which could cause a significant defect in her judgment or reliability. Her ADHD symptoms, anxiety and depressive symptoms appear to be somewhat controlled with medication, but also have the possibility of affecting her judgment and reliability, especially when she is under stress.

DOE Exhibit 8 at 15.

### **The August 18, 2009, Hearing**

The DOE Psychologist testified at the hearing. The DOE Psychologist's testimony essentially reiterated the opinions that she had provided in her written report.

The Individual testified that she does not believe she is alcohol dependent and continues to consume alcohol. Tr. at 71-72, 83, 102. She testified that she underwent alcohol treatment under duress because she feared her husband might harm her or himself.<sup>8</sup> *Id.* at 76-77. She further testified that she thought that alcohol treatment would be "a little vacation." *Id.* at 77. She also testified that she agreed to undergo alcohol treatment in order to save her marriage. *Id.* at 81.

The Individual testified that her husband coached her on what to say to the Hospital's intake counselor in order to ensure she would be admitted. Tr. at 81-82. She admitted that she and her husband provided the intake counselor with false information in order to ensure that she would be admitted to the Hospital. *Id.* at 81-83.

The Individual testified that the abrupt discontinuance of all of her regular prescription medications and the prescription of a new medication, Stratterra, resulted in her experiencing symptoms similar to those commonly resulting from alcohol withdrawal. Tr. at 83-86. The Individual repeatedly testified that she has never had a craving for alcohol. *Id.* at 88. The Individual testified that she does not recall expressing any desire to drink while in the Hospital. Tr. at 87-88. The Individual testified that Stratterra caused her to tell Hospital employees she wanted a drink. *Id.* at 90-94. When the DOE counsel noted that the medical records indicate that the Individual reported an alcohol craving on February 22, 2008, and that she did not start taking Stratterra until February 23, 2008, the Individual attributed her report of alcohol cravings to having her Zoloft discontinued. *Id.* at 92-93. The Individual testified that she is no longer being treated by her psychiatrist or her psychologist. *Id.* at 104.

The Individual initially testified that she submitted all of the medical records that were requested by the LSO on August 19, 2008. *Id.* at 133-134. The Individual subsequently admitted that she has not submitted the entire set of medical records from the Hospital.<sup>9</sup> *Id.* at 133-134. She subsequently reiterated her claim that she had supplied all of her treatment records from the Hospital. *Id.* at 145-146.

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<sup>8</sup> The Individual also claimed that during her examination by the DOE Psychologist, the DOE Psychologist had opined that the Individual did not have a problem with alcohol, but rather a problem with a "crazy" ex-husband. *Id.* at 80.

<sup>9</sup> At the hearing, the Individual suggested that she had provided the interviewer who conducted the August 19, 2008, PSI with 12 pages of progress notes, while the interviewer had inaccurately claimed that the Individual had provided only six pages of progress notes. Tr. at 70-71. In support of this contention, the Individual cites page 23 of DOE Exhibit 13 (the transcript of the August 19, 2008, PSI). However, that portion of the PSI transcript cited by the Individual only indicates that the Individual informed the interviewer of her intentions to supply the LSO with 12 pages of documents at some future point.

### III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. ANALYSIS

#### A. Criteria H and J

The record in this case supports the DOE's reliance on Criteria H and J. It is undisputed that the Individual was admitted to an inpatient alcohol treatment facility on February 20, 2008, and that she was treated at this facility for alcohol detoxification for ten days. Further, the medical records show that the Hospital's medical staff diagnosed the Individual with alcohol withdrawal and alcohol dependence. Moreover, the DOE Psychologist found on November 4, 2008, that the Individual met the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition (DSM-IV) for alcohol withdrawal and alcohol dependence by history. In addition, the Individual has admitted to the LSO that she continues to use alcohol.

The information in the DOE's possession, most notably, the diagnosis of alcohol dependence, raised a security concern because excessive alcohol use often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines), Guideline G at 10.*

The Individual disputes the diagnosis of alcohol dependence in this case. She claims that she was forced by her gun-wielding then-husband to deceive the Hospital's intake counselor, and then its medical staff, into admitting and treating her for alcohol withdrawal and dependence. She contends that the symptoms that led to the Hospital's diagnosis of alcohol withdrawal were the result of changes in her medications and that those same changes in medication led her to report cravings for alcohol to the Hospital's medical staff on at least three occasions on three

separate days. The Individual further noted that the DOE Psychologist had not independently diagnosed her with an alcohol disorder but rather relied upon the Hospital's conclusions. The Individual noted that laboratory tests, conducted at the request of the DOE Psychologist, had not shown that any of her liver enzymes were elevated. *Id.*

I find the Individual's arguments to be unconvincing. First, the Individual refused to provide the LSO with an authorization to obtain complete copies of the relevant medical records. Instead, she provided a partial set of her records to the LSO. If the Individual wished to convince me about an error in the Hospital staff's diagnosis, she should have allowed me to view the entirety of her medical records. Moreover, at the time of her admission to the Hospital, the Individual was under the care of a psychologist and a psychiatrist. Yet she chose to submit neither the medical records from those mental health professionals nor their testimony. Without a complete set of medical records or the opinion of her treating mental health professionals, I cannot accept her view that the Hospital staff's diagnosis of alcohol dependence is not valid. Nor can I conclude that the Hospital staff mistakenly found her to be suffering from alcohol withdrawal because the Individual believes her alcohol withdrawal symptoms were caused by changes in her medication. While the Individual's assertion is consistent with publicly available patient information, without an expert medical or pharmaceutical opinion explaining how and why the Hospital's medical staff's conclusions were flawed, I cannot conclude that the Hospital's diagnosis of alcohol withdrawal was incorrect.

Moreover, it is important to note that even if the Individual's account of her hospitalization was completely accurate, the circumstances she described raise serious security concerns in and of themselves. The Individual has testified that she intentionally provided false information and allowed her then-husband to provide false information to the Hospital's intake personnel in order to gain admission to the Hospital. If the Individual were to have gained admission to the Hospital under false pretenses, such actions, in and of themselves, would indicate that the Individual lacked sufficient judgment, trustworthiness and reliability to maintain a DOE security clearance.

In the end, I find that the Individual has not provided probative evidence to demonstrate that she did not suffer from alcohol dependence or any evidence that she is reformed or rehabilitated from that mental condition. Accordingly, I find that the security concerns raised under Criteria H and J remain unresolved.

## **B. Criterion L**

The Statement of Charges alleges:

During a PSI conducted on March 27, 2006, [the Individual] was made aware of the requirement to report hospitalization for mental illness, drug abuse or alcohol abuse to DOE. Despite being told this information, she failed to report her inpatient alcohol treatment at [the] Hospital . . . to DOE Personal Security according to reporting requirements.

Statement of Charges at ¶ II. The Individual has shown that she faced several severe family crises upon her release from the Hospital, including, but not limited to, a separation from her husband and the arrest of her son.<sup>10</sup> The Individual also noted that she had informed her management of her hospitalization. While it is clear that the Individual's family crises were an understandable distraction, she still should have been aware of the importance of promptly reporting her hospitalization to the LSO. Moreover, because of my concerns about her reliability and trustworthiness, I am not convinced that the Individual's failure to properly report her hospitalization was not a deliberate attempt to conceal derogatory information. Accordingly, I find that the security concerns raised under Criterion L have not been resolved.

## V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: October 21, 2009

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<sup>10</sup> The Individual has submitted evidence corroborating that she separated from her then-husband shortly after her release from the Hospital and that she obtained a restraining order against him.