

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXXX's.

October 10, 2002
DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: January 30, 2002
Case Number: VSO-0521

This Opinion concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as 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." A Department of Energy Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in the Decision, I recommend that the individual's security clearance not be restored.

I. Background

The individual is employed by a contractor at a DOE facility, and held an access authorization. The DOE suspended the individual's access authorization as a result of derogatory information that was not resolved during a personnel security interview (PSI) conducted in June 2001. That information is set forth in the Notification Letter, and is summarized below.

The Notification Letter states that the derogatory information regarding the individual falls within 10 C.F.R. §710.8(h), information that an individual "has an illness or mental condition of a nature which in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist, caused, or may cause, a significant defect in judgment or reliability," and 10 C.F.R. §710.8 (j), information in the possession of the DOE 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."

In support of Criterion H, the Letter states that the individual was evaluated by a DOE consultant-psychiatrist (“psychiatrist”) who found that the individual had an Alcohol-Related Disorder, Not Otherwise Specified, and exhibited a significant defect in judgment.¹ This defect was revealed when the individual resumed the consumption of alcohol despite a history of alcohol dependence, complicating depressive conditions, a daily regimen of Prozac, and alcohol-related problems in his family relationships.

The Letter based its charges under Criterion J on the psychiatrist’s diagnosis, and the individual’s forced enrollment in an alcohol treatment program in 1998 as a result of a family intervention. Despite the intervention and successful completion of the treatment program, the individual began drinking again after a two year abstinence, and had increased his consumption to two to three beers daily at the time of the PSI.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On January 30, 2002, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE counsel called two witnesses, the psychiatrist and a DOE personnel security specialist. The individual testified and also elected to call his girlfriend, the medical director of the substance abuse center, a psychologist, and two co-workers as witnesses. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE counsel and the individual during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.”

II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all 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). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer, I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the

^{1/} The personnel security specialist testified during the hearing that DOE guidelines accept “Alcohol Disorder, Not Otherwise Specified” as a factor under Criterion J. Transcript of Hearing at 28.

circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the 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 continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored as I cannot conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The facts in this case are uncontested. The individual has been employed by a DOE contractor for a number of years in a job that required that he maintain a security clearance. *Id.* at 172. The individual testified that he had historically been a moderate drinker. *Id.* at 192-198. In 1988, the individual decided to embark upon a five-year program to improve his health, and as a part of that program he stopped drinking, changed his diet, and began an exercise program. *Id.* at 203. However, in 1994, the individual began drinking moderately again. *Id.* at 204. His drinking increased and from 1995 to 1997, he frequently had two to three drinks a night, often drinking to the point of the intoxication. PSI at 26-28. His four children were either grown or in the process of leaving home, and the individual testified that he and his wife grew apart during this time. Tr. at 99. In 1997, the individual began drinking heavily, up to four to six drinks per evening (the equivalent of a half of a fifth of whisky). Ex. 13; PSI at 26. In the late 1990s, the individual was diagnosed with a migraine problem, and his doctor prescribed Prozac to treat this problem. Tr. at 210; Ex. 12. The individual continued to drink, even though two of his doctors advised him against drinking while taking Prozac. Tr. at 220-222. By 1998, the individual and his wife were experiencing serious problems in their marriage and had begun to see a marriage counselor. *Id.* at 205-206.

The individual's wife became concerned about his drinking in 1998, when she noticed that his behavior had changed. Ex. 13 at 1. She asked him to see a doctor and in August 1998, the individual assured both the wife and doctor that he could stop drinking on his own. *Id.* However, in November 1998, convinced that the individual had not changed his behavior, the wife and several other family members, with the help of the marriage counselor, staged an intervention to force the individual into alcohol treatment. *Id.*; Tr. at 215. The intervention group, which consisted of the wife, two of the individual's children, his sister-in-law, his son-in-law and a family friend, told the individual that he would have to enter an alcohol treatment center or leave the family home. Tr. at 215; PSI at 5. The individual entered a local alcohol treatment center, where an assessment nurse met the individual and his family and performed an initial evaluation of the individual. Tr. at 117-120. The nurse then phoned the medical director and described the individual's symptoms to the director, a medical doctor. *Id.* at 117. The doctor diagnosed the individual with alcohol dependence, alcohol withdrawal, alcohol-induced mood disorder, and chronic mild depression. Ex. 10; Ex. 13. The individual was admitted to the detoxification unit. Tr. at 146-150. The doctor did not see the individual at the time of admission, but did see him at a later time and evaluated him until his discharge.

Id. at 147. The treatment program consisted of seven days of inpatient care, including use of an alcohol abuse drug, Ativan. Tr. at 224, Ex. 13 at 2. The individual then had to undergo 27 days of outpatient treatment, including Alcoholics Anonymous meetings (AA). Tr. at 225. The individual successfully completed the program and reported his treatment to his supervisor, but the supervisor did not report the incident to personnel security. PSI at 14-15. At the end of the program, the center recommended that the individual abstain from alcohol use for the rest of his life. Tr. at 225.

The individual abstained from alcohol and continued to attend AA during 1999 and 2000. Tr. at 226. However, in 2001 the individual researched the issue of alcoholism and abstinence, and decided in February 2001 that it would be safe for him to drink moderately. Tr. at 232-234; PSI at 12. Around that time, he also stopped attending AA meetings and separated from his wife. PSI at 11, Tr. at 226. He began to drink one to two glasses of wine with meals once or twice a month. Ex. 14 at 2. DOE personnel security conducted a PSI with the individual in June 2001 during a routine reinvestigation. Ex. 8. During the PSI, the individual admitted that he had attended a treatment program, and that although the program recommended abstinence for life, he had decided to resume moderate consumption of alcohol. PSI at 11-14. He contended that the treatment center did not give him any diagnosis of his condition. PSI at 9. By this time, he had increased his consumption to two to three beers per day. Ex. 14. Despite the information gained from two years of attending AA, he was not concerned by his resumption of the use of alcohol. PSI at 12-14.

The DOE psychiatrist interviewed and evaluated the individual in September 2001. Ex.10. The psychiatrist opined that the individual had an Alcohol Disorder, Not Otherwise Specified, and that the individual exhibited a significant defect in judgment and reliability. *Id.* at 7-8. According to the psychiatrist, the individual showed poor judgment by continuing to drink despite a diagnosis of alcohol dependence, a recommendation from the alcohol treatment program to abstain from alcohol use, strained family relationships caused by his alcohol problems, and a warning from two of his personal physicians against drinking alcohol while taking Prozac. *Id.* at 8. The individual testified at the hearing that he learned of the 1998 diagnosis of alcohol dependence for the first time after reading the report of the psychiatric evaluation in 2001. Tr. at 227.

In October 2001, the manager of the DOE office suspended the individual's clearance. Ex. 4. The individual hired a lawyer for advice about his access authorization and also read the cases on the OHA website regarding Criteria H and J. Tr. at 227, 230-31. Consequently, he decided to stop drinking in February 2002. *Id.* at 229.

B. Mitigating Factors

As evidence of mitigation of DOE's security concerns, the individual offered the following: (1) testimony of the medical director of the alcohol treatment center that the 1998 diagnosis was wrong; (2) an alternative argument based on the testimony of a licensed clinical psychologist that, even if he was alcohol dependent in 1998, he was in full remission at the time of the hearing and that he had no signs of clinical depression;

and (3) testimony that the individual was not aware that he was diagnosed with alcohol dependence, but that he immediately stopped drinking after realizing DOE's policy on abstinence after a diagnosis of alcohol dependence.

1. The Diagnosis of the Medical Director

The medical director of the treatment facility testified at the hearing that his 1998 diagnosis was inaccurate, and that the individual did not have the symptoms of alcohol dependence or depression when he was admitted to the treatment center. Tr. at 126-131, 135-136. The doctor testified that alcohol dependence was one of several diagnoses that the clinic used in order to qualify for reimbursement by a patient's insurance company. *Id.* at 120. According to the doctor, anyone who presented with an alcohol problem was issued the same standard protocol, called "alcohol orders," which included Ativan for alcohol withdrawal. Tr. at 122-124. However, the doctor also testified that the individual did not have high blood pressure, which is often associated with alcohol withdrawal, or any other typical symptoms of alcohol withdrawal. *Id.* at 130-135. Despite this alleged absence of symptoms, the clinic admitted the patient and gave him their standard alcohol withdrawal treatment program for seven days. *Id.* at 123, 130, 135-136. The doctor concluded his testimony by stating that because of the number of cases that he admitted daily, and based on family pressure to admit, in this case he issued a standard diagnosis of alcohol dependence without looking closely at the record or evaluating the criteria for that diagnosis. *Id.* at 148. He testified that this was the first problem with any of the center's diagnoses in 15 years and 15,000 detoxification procedures. *Id.* at 115, 121.

2. The Clinical Psychologist

The individual met three times with a licensed clinical psychologist in February and April 2002 in order to get an opinion on his substance use. Tr. at 95. The clinical psychologist also reviewed the DOE psychiatrist's report, medical records from the treatment center and the individual's private physician, and some DOE security documents. Tr. at 96, Ex. 17. The psychologist concluded that the individual had an alcohol problem in the past that required treatment, but that his current drinking pattern was not problematic. Tr. at 97. She also concluded that he was rehabilitated from the past diagnosis of alcohol dependence (even though she did not necessarily agree with the diagnosis) as evidenced by successful completion of the alcohol program, maintaining abstinence and then maintaining sobriety, which she called "controlled drinking". *Id.* at 103. She based this on an absence of any indication of difficulties at work, problems in relationships, instances of intoxication, or impairment of behavior, thinking, or judgment. *Id.* The psychologist testified that she was "very confident" that the individual could maintain abstinence if required to do so. *Id.* at 98. Further, she found no evidence of clinical depression. *Id.* at 105.

3. Abstinence after a Diagnosis of Alcohol Dependence

The individual offered a two year period of abstinence, from December 1998 through December 2000, as mitigation of DOE's security concerns regarding the diagnosis of alcohol dependence. The individual also

argued that he did not know that he had been diagnosed with alcohol dependence until so informed by the report of the DOE psychiatrist in September 2001. Tr. at 227. He testified that the treatment center had advised him, and all of its clients, to remain abstinent for life, but that he was never told that the center diagnosed him with alcohol dependence or any other alcohol disorder. *Id.* at 225-227. However, when his clearance was suspended in October 2001, he realized the gravity of the situation, and began to explore DOE's policy on drinking after a diagnosis of alcohol dependence. *Id.* at 243-244. As a result, in February 2002, the individual stopped drinking and to the date of the hearing had maintained abstinence. *Id.* at 231.

C. Testimony of the DOE Psychiatrist

At the hearing, the DOE psychiatrist testified that after reviewing the records of the treatment center and interviewing the individual, he had diagnosed the individual with an alcohol disorder, not otherwise specified. Tr. at 54-55, 60.² The psychiatrist also concluded that the individual had a significant defect in judgment, based on the individual's resumption of drinking in February 2001. *Id.* at 59. The psychiatrist testified that even absent the diagnosis of alcohol dependence, his diagnosis of the individual would remain the same because of the individual's period of treatment at the substance abuse center. *Id.* at 62. The psychiatrist found that the individual was in full sustained remission until he resumed the use of alcohol in February 2001. *Id.* at 71. However, when the individual resumed drinking, his drinking in early 2001 was of a "maladaptive nature." *Id.* According to the psychiatrist, even if the individual did not know that he had been diagnosed with alcohol dependence, he should have "come to the conclusion that there was a serious problem with alcohol, given the fact that he required this treatment" *Id.* at 76. The psychiatrist also concluded that the individual had a history of resorting to alcohol when faced with increasing stressors. *Id.* at 77. In order to show rehabilitation or reformation from his alcohol problem, he testified that the individual would need to show 12 months of abstinence and enrollment in a support program such as AA. *Id.* at 82.

At the end of the hearing, after evaluating the individual's evidence and testimony, the psychiatrist found that the individual had taken positive steps towards resolving his alcohol problem, and that these positive steps were a mitigating circumstance in his case. Tr. at 250. The psychiatrist described the individual as "motivated" and testified that he would recommend the individual for the Employee Assistance Program Referral Option (EAPRO), a counseling program, if asked to do so. *Id.* at 251.

D. The Individual Has Presented Insufficient Evidence of Mitigation

After reviewing the record, I conclude that the individual has not presented sufficient evidence of mitigation to relieve DOE's security concerns, nor has he presented adequate evidence of reformation or rehabilitation from his alcohol-related problems.

^{2/} According to the psychiatrist, this is a maladaptive drinking pattern in an individual, but does not meet the criteria of alcohol abuse or alcohol dependence. Tr. at 54-55, 60.

1. The Testimony of the Medical Director Was Not Persuasive

The testimony of the medical director of the treatment center was not persuasive and did not convince me that his 1998 diagnosis of alcohol dependence was wrong. The doctor was very evasive when DOE counsel questioned him on who was responsible for that diagnosis and how the diagnosis came to be recorded. Tr. at 139-143. Even though the individual did not see the doctor the day that he was admitted, the individual was assessed by a nurse during an initial interview, which included the participation of five family members and a friend. This was the center's normal procedure, and as the doctor himself testified, he had never before had a problem with or a question about a diagnosis. Tr. at 135, 146-147. Following the routine admittance, the assessment nurse contacted the doctor, they discussed the individual's symptoms, and the doctor told the nurse to admit the individual. The individual was even admitted to the detoxification unit, which is not automatic for patients diagnosed with alcohol dependence. *Id.* at 149-150. The doctor further testified that he evaluated the individual until his discharge, which was seven days later. Tr. at 147.

At no time did the doctor change the diagnosis or recommend that the individual be discharged before the end of the normal seven day inpatient period. *Id.* Even though the individual was admitted before the doctor saw him, once the doctor evaluated the individual there is no evidence that he discharged the individual from the program. *Id.* Rather, the doctor let the individual remain at the center for the entire seven day program, and the reports of the center staff convinced the insurance company that the individual had detoxification symptoms and that treatment was warranted. *Id.* at 121-122; PSI at 9. Thus, I cannot conclude that the diagnosis of alcohol dependence was inaccurate.

2. The Individual Is In Partial Remission

I found the testimony of the psychologist to be credible, and I accept her diagnosis that the individual had rehabilitated himself from his earlier diagnosis of alcohol dependence after he completed two years of abstinence in 2000.³ Tr. at 103. However, the psychologist argued that the individual is still rehabilitated and in full remission even though he engaged in "controlled drinking" in 2001 and early 2002. *Id.* at 103. The DOE psychiatrist, on the other hand, argued that the individual was in partial remission at the time of the hearing and pointed out that the individual had a history of periods of abstinence followed by a return to the use of alcohol in increasingly large amounts. *Id.* at 82-84.

I accept the conclusion of the psychiatrist that the individual has not shown adequate evidence of rehabilitation and reformation. The psychiatrist said that the individual has a history of drinking when faced with "stressors." Tr. at 77. For instance, he abstained from 1988 to 1993, but then began drinking again in 1994 on a moderate basis. *Id.* at 204. When his marriage faltered, he increased his drinking to a half a bottle a day, at which point his family had to stage an intervention in 1998. Ex. 13. After he completed the treatment program in 1998, he abstained again for 2 years, also regularly attending AA meetings. Tr. at 226.

^{3/} The DOE psychiatrist agreed that the individual sustained full remission until February 2001. Tr. at 71.

However, only two years after completing the program, he stopped attending AA, separated from his wife, began drinking one or two glasses of wine twice a month in February 2001, and then increased his consumption until he was drinking two to three beers daily by June 2001.⁴ PSI at 11. These are not the actions of an individual who has reformed his behavior. Rather, the individual seems to be following an old pattern of periodic abstentions followed by a gradual increase in alcohol consumption, with the possibility of negative consequences in the future.

3. Insufficient Period of Abstinence

I find that four months of abstinence (at the time of the hearing) is not sufficient to demonstrate rehabilitation or reformation from the diagnosis of Alcohol Disorder, Not Otherwise Specified. The individual decided to move from “controlled drinking” to abstinence only after he had a relapse and then became aware of DOE security concerns regarding a cleared individual who resumes drinking in any quantity after a diagnosis of alcohol dependence, alcohol abuse, or alcohol disorder. Tr. at 232-234, 240-243. When an individual claims to have been rehabilitated from substance-related disorders, we often find that there is not sufficient evidence of rehabilitation until, at a minimum, the individual has abstained from the use of all psychoactive substances for a period of at least twelve months. *See Personnel Security Hearing*, Case No. VSO-0396, 28 DOE ¶ 82,785 (2001), *aff’d*, 28 DOE ¶ 83,020(2001), *aff’d (OSA 2001)*, and cases cited therein. In this case, the psychiatrist also recommended 12 months of abstinence as the minimum period to alleviate DOE’s security concerns and I agree. Tr. at 82.

Further, I cannot find mitigation in the individual’s argument that because the treatment center did not inform him that he had been diagnosed as alcohol dependent, he should not have been expected to act as if he knew of that diagnosis, including abstaining from alcohol. I agree with the psychiatrist that even in the absence of a formal diagnosis, the individual should have realized that he had a serious problem with alcohol when a large group of family members came together to force him into treatment.⁵ Tr. at 75-76. The individual spent a week in a hospital detoxification program, a month in outpatient programs, and almost two years attending AA meetings, where he took a vow of abstinence. Tr. at 240-241. His alcohol counselors advised abstinence for life, and his doctors warned him to avoid drinking because of his daily medications, but the individual resumed drinking. These factors alone should have been sufficient to alert the individual that he needed to reform his drinking habits.⁶

^{4/} The individual began attending AA meetings again in early 2002. Tr. at 240.

^{5/} The psychiatrist testified that he would have diagnosed the individual with Alcohol Disorder, Not Otherwise Specified even if he found that the center’s diagnosis of alcohol dependence was wrong. Tr. at 62.

^{6/} I was also troubled by the evidence of denial on the part of the individual about the extent of his alcohol problem. For instance, the individual testified at the hearing that he did not know why his wife arranged the intervention in 1998, even though admitting that he knew he was drinking too much at that time and that she wanted him to stop drinking. Tr. at 216-217. He surmised that she staged the intervention primarily as an excuse to break up the marriage. *Id.* at 217. However, that self-serving explanation does not explain why a large

(continued...)

III. Conclusion

I find that the individual cannot be considered rehabilitated or reformed from his use of alcohol at this time. At this stage in the individual's rehabilitation, with four months of abstinence, a history of relapse, and fairly recent resumption of attendance at AA meetings, I cannot find that the individual is rehabilitated or reformed.

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (j) and (h) in suspending the individual's access authorization. The individual has failed to present adequate mitigating factors or circumstances to erode the factual basis for these findings or otherwise alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: October 10, 2002

6/ (...continued)

group of family members assisted her in bringing the individual to the center. *Id.* His "explanation" may reflect the extent of the individual's denial. *See Personnel Security Hearing*, Case No. VSO-0130, 26 DOE ¶ 82,779 (1997), *reversed*, 26 DOE ¶ 83,017 (1997), *reversed* (OSA Jan. 7, 1998) (describing the importance of the absence of denial as a factor in rehabilitation and reformation).