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October 16, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: May 24, 2002

Case Number: VSO-0547

This Opinion concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the Individual") to have a level "Q" access authorization reinstated 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 local Department of Energy (DOE) Security Office suspended the Individual's access authorization under the provisions of Part 710. This Opinion considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, it is my opinion that the Individual's access authorization should be restored.

**I. BACKGROUND**

The events leading to the present proceeding began when the Individual underwent a routine re-investigation of his eligibility to maintain a DOE Access Authorization in 1996. During this re-investigation, the Individual signed and submitted a DOE Security reporting form in which he certified that his only use of illegal drugs occurred in 1980 or 1981 when he used marijuana on two or three occasions. <sup>1/</sup> During a June 12, 1997 Personnel Security Interview (PSI), however, the Individual admitted using marijuana from 1991 to 1995, as well as methamphetamine from December 1994 to May 1995. The Individual also acknowledged that he had knowingly and deliberately omitted this information from the QNSP he had signed and submitted in 1996. Because the Individual had intentionally submitted a false QNSP and since the Individual had previously signed a DOE Drug

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<sup>1/</sup> The DOE Security reporting form at issue in the present case is a Questionnaire for National Security Position (QNSP).

Certification (in 1985) promising to refrain from the illegal use of drugs, his access authorization was suspended in 1997. The Individual did not contest this suspension and continued to work at a DOE owned facility without an access authorization. Transcript of Hearing at 10. 2/

In 2001, the Individual's employer requested that his access authorization be restored. A reinvestigation was conducted and it was determined that the security concerns raised by the derogatory information discussed above remained unresolved. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE issued a letter notifying the Individual that information the DOE possessed created a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter specifies two areas of derogatory information described in 10 C.F.R. § 710.8(f) and (l). Specifically, the Notification Letter charges that the Individual has "deliberately 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 made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31," and has "engaged in unusual conduct or is subject to circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). The Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE presented two witnesses: the Individual and the Individual's supervisor. The Individual called eight witnesses and testified on his own behalf. 3/ The record of this proceeding was closed on September 18, 2002, when OHA received a copy of the transcript of the hearing. *See* Transcript of Hearing, Case No. VSO-0547 (hereinafter cited as "Tr.").

## II. 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 an opinion based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that the access authorization decision "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

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2/ The Individual candidly acknowledges that he used illegal drugs, violated a DOE drug certification and intentionally provided misleading information on a DOE security reporting form. Tr. at 5.

3/ The witnesses called by the Individual included his spouse, several of his past and present supervisors, his Alcoholics Anonymous sponsor, co-workers and the Security Officer for the division in which the Individual is employed.

factors in rendering this Decision: 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.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, the Individual has convinced me that restoring his security clearance would not endanger the common defense and would be clearly in the national interest.

### **III. FINDINGS OF LAW AND FACT**

The derogatory information set forth in the Notification Letter raises serious security concerns about the Individual's ability to hold a DOE access authorization. The derogatory information indicates a history of illegal drug use, a violation of a DOE Drug Certification, and an intentional omission of material information from a DOE security reporting form.

When the Individual initially applied for his DOE access authorization, he informed DOE security officials of his prior experience with illegal drugs. On June 4, 1985, the Individual signed a DOE Drug Certification providing written assurance that he would refrain from using or becoming involved in any way with illegal drugs while holding a DOE access authorization and was then granted a DOE Access Authorization. The Individual was eventually required to undergo a routine re-investigation of his eligibility to maintain a DOE Access Authorization. During this re-investigation, the Individual was required to complete a QNSP. The Individual signed and dated this QNSP on July 22, 1996. The information provided by the Individual in this QNSP indicated that the Individual's use of illegal drugs was limited to two or three instances of marijuana use in 1980 and 1981. As part of his routine re-investigation, the Individual was interviewed by an Office of Personnel Management (OPM) investigator in April 1997. Apparently, the day after the Individual's interview with the OPM Investigator, the Individual contacted the OPM Investigator to inform the investigator that he had withheld information about the full extent of his drug use during the previous day's interview. Tr. at 12. A PSI was conducted on June 12, 1997. During this PSI, the Individual admitted that he had used marijuana from 1991 to August 1995 and methamphetamine from December 1994 to May 1995. During this PSI, the Individual also explicitly admitted that he had falsified information that he provided in his July 22, 1996 QNSP and violated his 1985 DOE drug certification. As a result, a notification letter was issued to the Individual informing him that (1) the DOE was in possession of derogatory information which raised serious security concerns about the Individual's ability to maintain a DOE access authorization, and (2) his access authorization was suspended. The Individual

apparently choose not to contest the suspension and continued his employment at a DOE owned facility. Tr. at 9-10. Six years later, the Individual now seeks restoration of his access authorization.

In and of itself, illegal drug use raises serious security concerns. <sup>4/</sup> Involvement with illegal drugs exhibits a disturbing disregard for laws prohibiting their use. Such disregard for the law raises concerns that the Individual may similarly disregard other laws, including those which protect classified information and special nuclear materials. See *Personnel Security Hearing, Case No. VSO-0116*, 26 DOE ¶ 82,765 at 85,602 (1997) (citing *Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,512 (1995)). It is important to note that avoiding illegal drug use is itself a requirement of both the DOE's safety and security regulations. Moreover, the use of illegal drugs (and the disrespect for law and authority that such use suggests) exhibits a lapse in judgment and maturity. Finally, I note that involvement with illegal drugs may render the user susceptible to blackmail or coercion.

The DOE's security concerns under Criterion L are based upon the Individual's use of marijuana and amphetamines despite his promise, in his 1985 Drug Certification, that he would not use illegal drugs. Violation of the DOE Drug Certification presents serious security concerns which raise substantial doubts about the Individual's ability to safeguard classified information and special nuclear materials. *Personnel Security Hearing, Case No. VSO-0208*, 27 DOE ¶ 82, 774 at 85,655 (1998). Not only does it bring into question the Individual's judgment, reliability and trustworthiness, but it raises concerns about the possibility of future drug use. The security concerns raised by a violation of a DOE Drug Certification are so serious and substantial that I am aware of only six cases in which an individual who has violated the drug certification has eventually been granted a security clearance. Those cases are: *Personnel Security Hearing, Case No. VSO-0430*, 28 DOE ¶ 82,803 (2001); *Personnel Security Hearing, Case No. VSO-0313*, 27 DOE ¶ 82,835 (2000), *affirmed* (OSA April 20, 2000); *Personnel Security Hearing, Case No. VSO-0394*, 28 DOE ¶ 82,781 (2001); *Personnel Security Hearing, Case No. VSO-0307*, 27 DOE ¶ 82,837 (2000); *Personnel Security Hearing, Case No. VSO-0136*, 26 DOE ¶ 82,778 (1997); *Personnel Security Hearing, Case No. VSO-0045*, 25 DOE ¶ 82,774 (1995). <sup>5/</sup>

Consequently, I find that DOE properly invoked Criterion L in suspending the Individual's clearance. The Individual's failure to honor his Drug Certification, and his violation of DOE's and his employer's drug policies, raise important security concerns. The DOE security program is based on trust. When a security clearance holder breaches that trust, 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. VSO-0442*, 28 DOE ¶ 82,815 (2001); *aff'd* OSA (October 2, 2001). If an employee breaks a written promise to the

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<sup>4/</sup> It is important to note that while illegal drug use raises serious security concerns, the Individual's illegal drug use was not among the unresolved security concerns set forth in the notification letter.

<sup>5/</sup> In each of these cases, the individual established that the particular circumstances of the case warranted a conclusion that, despite the individual's violation of the drug certification, the individual was honest, reliable, and trustworthy.

DOE, that trust is violated. It was precisely because of the Individual's prior illegal drug use that he was asked in 1985 to sign a Drug Certification, promising that he would never again use illegal drugs while employed in a position requiring an access authorization. He clearly violated this promise when he used marijuana and methamphetamines after he had signed a DOE Drug Certification. He therefore risked his career and access authorization, violated DOE safety and security regulations, and put himself, his fellow employees, and the national security at risk.

The Individual now candidly admits that the answers he provided in the July 22, 1996 QNSP intentionally omitted the full extent of his illegal drug use. An intentional provision of false information in a DOE Security reporting form constitutes a breach of the trust upon which the DOE security program is based. False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of judgment, honesty, reliability, and trustworthiness. Cases involving falsifications are difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor treatment programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the falsification and the Individual's subsequent history in order to assess whether the individual has rehabilitated himself from the falsehood and whether granting or restoring the security clearance would pose a threat to national security. *See VSO-0442*. In the present case, the Individual's falsification, while apparently isolated, was intended to hide an extensive history of illegal drug use, and his violation of a DOE Drug Certification. Accordingly, I find that DOE properly invoked Criterion F in suspending the Individual's clearance.

The Individual's use of illegal drugs, violation of his DOE drug certification and falsification of his QNSP all raise security concerns that serve to raise substantial doubts about his ability to safeguard classified information and special nuclear material. If the Individual had brought this matter before a hearing officer in 1997, he probably would have been denied. However, in the present case, a substantial time has passed and the individual has shown that he has undergone substantial change during this time. I therefore find that the Individual has presented sufficient evidence to resolve the serious concerns about his judgment, reliability, honesty and potential for future drug use.

My impression of the Individual, formed at the hearing, is that he is an extremely intelligent, competent, enthusiastic and dedicated worker. It is clear that he recognizes the seriousness and the significance of his actions and is sincerely committed to avoiding future drug use and, more importantly, to continue maintaining the highest standards of personal integrity. Most importantly, I am convinced that the Individual has undergone profound changes during the six years since he breached the DOE's trust. I therefore persuaded that the Individual has demonstrated that he is now a particularly honest and responsible person and that his falsification of the QNSP and violation of a DOE Drug Certification were isolated occurrences that are highly unlikely to recur.

As an initial matter, I note that the record indicates that the Individual's last use of illegal drugs (and the resulting violation of his DOE Drug Certification) occurred in 1995, while the QNSP falsification occurred in mid-1996. As a result, over six years have passed since the Individual's problematic conduct occurred. I am convinced that, during this time, the Individual has undergone some significant changes and has greatly matured. As a result of these changes, I am convinced that future illegal drug use or acts of dishonesty would now be distinctly out of character for the Individual.

In 1995, the Individual found that his life had spun out of control. He was ending an unhealthy marriage, he was experiencing financial problems and he had a significant substance abuse problem. Tr. at 13-16, 25, and 27. However, he subsequently ended his first marriage and entered into a new relationship which has resulted in his second marriage. The testimony provided by the Individual, his present spouse, his friends, his co-workers and his supervisors has convinced me that the Individual's second marriage is much happier and healthier than his first marriage.

The Individual has also recognized that he is an alcoholic and has, by all accounts, successfully reformed and rehabilitated himself from his alcohol problems. In 1994, he entered and completed an in-patient substance abuse treatment program. Tr. at 15-16. In 1998, he became active in Alcoholics Anonymous (AA) and embarked upon a Twelve-Step program. It was not until he joined AA that he was able to achieve sobriety and continuously refrain from illegal drug use. Through AA and the Twelve-Step program the Individual has grown and matured and has recognized the importance of honesty and integrity to his own well being. The testimony of his supervisor, spouse, friends, co-workers and AA sponsor evidence that the Individual has put a lot of effort and commitment into his 12-Step program and has greatly benefitted from it.

The Individual testified convincingly about the changes he had made in his life.

In early 1995, February 13th, I believe, my first wife and I separated. It took me a couple of months before I was able to accept that our marriage was over. At that time I believe I was fairly devastated. I hit what I would call my bottom. Very shortly after that I realized that I had a chance to -- a chance that a lot of people don't have to rebuild my life, to basically start over. I had almost nothing left, I -- yeah, I had almost nothing left, so that was my chance to start over. Having been brought up in what I consider a very good family, I was taught the difference between right and wrong. My parents were churchgoers, et cetera. I think I have a -- I had, and still have a very firm foundation, and that's what I used to rebuild my life on. That includes honesty, integrity, being the best person I could possibly be, things like that.

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Well, I believe that for a lot of years prior to 1998 I had a problem with drinking, and I was unable to admit it. The whole idea of denial that -- I think comes right along with a problem like that. In 1998, a few occurrences, I guess you could say, slapped me in the face, to put it bluntly. There was one occasion where . . . my supervisor, had to pull me aside. Someone had reported to him that I had smelled of alcohol. Now, I was not drinking before coming in to work. I was not going out to lunch having drinks for lunch, but for some reason I was smelling of alcohol. I was drinking a lot. There was also an occasion where my group leader had to pull me into his office with the same complaint, that I had smelled of alcohol. I'm not exactly sure when those two things occurred, but I believe it was in 1998. I don't remember how close to September, but come September 7th, 1998, I made the decision to quit drinking. Back in 1994 I had voluntarily placed myself in alcohol rehab . . . At the time I believe it was an effort to try to save my marriage, and so I wasn't as focused on my own

recovery as I should have been, and shortly after began drinking again. Anyhow, I was still armed with those tools. Those things that they teach you in rehabilitation I don't think ever go away. You can mask them with denial, you can pretend that they don't apply to you. I've seen a lot of people in AA still live behind that mask of denial and not -- without the ability to admit that they have a problem. In September of '98 I admitted I had a problem. I quit drinking. I began attending meetings. I tried to make 90 in 90, I think I made 88 or 89 meetings in 90 days. I continued in AA probably four or five times a week. When I started going to school, my AA attendance slacked off quite a bit. I was probably only attending a meeting a month. And I'd say in the last eight or nine months I've been averaging probably two meetings a week.

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I've made a commitment to be completely honest with the DOE, no matter what my mistakes might be. However, I believe that I've set up for myself much more productive ways of dealing with problems such that drugs will never enter into my life again. As an alcoholic I understand that there is always some chance that I could fall off the wagon. It's happened to people after 18, 20 years of sobriety. Granted, it's not very -- it's not very likely. The more time a person has, obviously, the less likely that is to happen. But in that situation, I've also set up, I don't know what you call it, a telephone tree, or, you know, different methods of support. But no matter what my mistakes are, yes, by being honest with the DOE in 1997, that is an unbelievable freedom that I would never want to give up again. You know, holding secrets in, and I'm talking about secrets about bad things I've done, is a horrible thing. It's a horrible way to go. It's a horrible thing to live with. When I finally broke through that denial such that I was honest with the DOE, when I got that off my chest, it was an unbelievable freedom that I could never give up. I couldn't.

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And then all of the positive things that have happened in my life, I have a wonderful wife. I have a nearly two-year old baby boy, he's just a joy. I'm very close to having my bachelor's degree finally, at age 40. Something I wanted to do since I was in high school is computer science. These are just a few of things. If I were dishonest again, if I did drugs again, if I did any of these things, I would be sacrificing these wonderful things that I've gotten in my life. I don't know if struggle is the right word, but through daily progress, daily work, daily improved, self-improvement, these things have become part of my life. I enjoy them. I love my wife. I love my child. I have a home, my own home. I've worked very hard for my degree. I don't think I'm willing to sacrifice those for saving an ego, perhaps. I'm not exactly sure other than denial why I could have been dishonest in the first place.

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In the middle of '95, I guess is when I would say that I hit bottom. And I use that term

"hitting bottom," we use that in AA as a way of saying that something woke me up to say, you had better do something now or you may lose everything, including life. From that time, from the time that I realized that I was at the bottom and that I could rebuild my life, things started improving, but, you know, it wasn't just overnight. So, yes, come 1996 when I was filling out the QNSP, I was still -- you know, you could call it I was still a baby. I was coming out of that hole that I had been in. I was rebuilding my life. It was a slow but sure process. I also know that in 1996 I was very much overwhelmed with filling out stacks of interrogatories, of meeting with counsel, lawyers, hearings to determine interim child support, interim -- interim, interim, who would have physical custody of the children, who would have physical custody of the house. It was a very, very hectic time of my life. I was just coming out of my hole. I no doubt was not thinking straight. I was still drinking in 1996. I try not to use that as an excuse though. It was a part of my life. Therefore, as long as alcohol was a part of my life, there was some level of denial that was part of my life as well.

Tr. at 14-16, 21-23, 26-27. I am also impressed by the particularly high regard in which the Individual is held by his friends, co-workers, fellow AA members, and supervisors. The character witnesses who testified on the Individual's behalf have demonstrated that they knew the Individual well for extended periods of time. <sup>6/</sup> Each of these character witnesses, most of whom currently hold "Q" clearances, testified that they had a high level of trust in the Individual. <sup>7/</sup> Tr. at 39-40, 44-46, 49-51, 53-55, 57, 60-61, 63-68, 73-75, 87-88 and 91. As one of the Individual's supervisors testified:

You know, I think [the Individual] had some rough things going on personally at the time. It's extremely out of character. [The Individual] is one of the most trustworthy people I know. He's a man of his word. And for him to have done that, it had to have been, you know, an extreme case. He's since remarried, has a young child, is close to getting -- even with all that, he's nearly finishing his degree. Our group saw fit to work hard to get him reclassified and promoted, because we respect his capabilities. And we wouldn't do that if we didn't have the utmost regard for him. So, yes, I consider those things highly out of character. And I think the fact that it happened many years ago, he's had several years to prove himself, and during that time I'm aware of no incidents that are in any way indicative about behavior that is going to reoccur or has reoccurred.

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<sup>6/</sup> One witness testified that he had known the Individual for 14 years. Tr. at 38. Another witness testified that he had known the Individual for 9 years. Tr. at 42. A third witness testified that he had known the Individual for over 10 years. Tr. at 48. A fourth witness testified that he had known the Individual for almost 4 years. Tr. at 53. A fifth witness testified that she knew the Individual for 17 years. Tr. at 57. A sixth witness testified that he knew the Individual for 4 years. Tr. at 66. A seventh witness testified that he had known the Individual for 17 years. Tr. at 86.

<sup>7/</sup> The Individual's character witnesses included the security officer for his division, who described him as "extremely reliable, dependable . . . [and] security conscious." Tr. at 57.

Tr. at 46-47. The Individual's AA sponsor testified: "I characterize [the Individual] as a person trying to turn their life around, who has been doing it very successfully since I've met [him]. [He's] honest. I believe [he has] a lot of integrity." Tr. at 53. The Security Officer for the Individual's division testified that she trusted him "explicitly." Tr. at 61. The Security Officer further testified:

But you asked me do I ever -- did I ever question his honesty or integrity. No. When it comes to national security, when it came to any job-related security, I mean, there were -- there has always been the classified projects and programs within XXXXX. Never have I questioned -- I never had any doubt in my mind about him working closely with these programs, their projects, this information.

Tr. at 64. Another of the Individual's supervisors testified: "I think [the Individual] is much less likely to be a security risk in the future than most people with security clearances, because he has been through, effectively, a baptism of fire and has pulled out of it successfully, and so I think he's a good risk." Tr. at 91.

Several of these character witnesses testified to the positive changes they had observed in the Individual. The Individual's AA sponsor described him as "a person trying to turn their life around, who has been doing it very successfully. . . ." Tr. at 53. A fellow AA member testified that the Individual is "paying attention to what's going on in life and taking care of things" and successfully taking part in the AA program. Tr. at 68-69. One of the Individual's supervisors noted that the Individual is a "different person today." Tr. at 90-91. DOE presented no evidence or testimony contradicting any of the Individual's testimony or that of his witnesses.

I am also impressed by the judgment exercised by the Individual in facing up to the consequences of his breach of his drug certification and provision of false information on the July 22, 1996 QNSP. He self-reported his illegal drug use to DOE Security officials during his 1997 re-investigation. The Individual recognized that he has made some serious errors and has been held accountable for them. Moreover, the Individual has conducted himself in exemplary fashion during the present proceeding. In considering the serious security concerns raised by the Individual's violation of his DOE drug certification, I must take into account that his self-reporting of his illegal drug use, violation of the DOE Drug Certification and falsification of his QNSP was an act of moral courage and integrity. If it were not for his candor, it is unlikely that DOE Security officials would have ever become aware of his transgressions.

Although the security concerns raised by a violation of a DOE drug certification and falsification of information provided in a QNSP are particularly serious in nature, I find that the Individual has been rehabilitated and those concerns have been satisfactorily resolved by the evidence in the record of this proceeding. That evidence shows that the Individual has undergone significant personal changes during the six years that have passed since Individual's actions which raised these security concerns occurred. That evidence also shows, that the during that past six years, the Individual has conducted himself in an exemplary manner and has shown that he is now trustworthy, reliable and honest.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has presented evidence that warrants restoration of his access authorization. Since the Individual has resolved the DOE's allegations under Criteria F and L, I conclude that the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's access authorization should be restored. The DOE 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 16, 2002