

\* 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 XXXXXXX's.

January 14, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 10, 2002

Case Number: VSO-0552

This Decision concerns the eligibility of XXXXXXX (the individual) for access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Access to Classified Matter or Special Nuclear Material." The individual's access authorization was requested by one of the Department of Energy's (DOE) Operations Offices. As explained below, I have determined that the individual's access authorization should be granted.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with, the DOE, DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides 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).

In this instance, a DOE contractor requested that the individual be granted an access authorization as a condition of his employment. However, the local DOE security office initiated formal administrative review proceedings by informing the individual that his access authorization would be withheld pending further consideration of certain derogatory information it received that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter subsequently issued to the individual on April 30, 2002. More specifically, Enclosure (1) attached to the Notification Letter contains the DOE Office of Safeguards and Security's (DOE Security) findings with respect to the individual that fall within the purview of potentially

---

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8(h), (j) and (l). The bases for these findings are summarized below.

Enclosure (1) of the Notification Letter alleges initially that the individual has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist . . . may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h) (Criterion H). In support of this assertion, Enclosure (1) states that on February 19, 2002, the individual was evaluated by a DOE consultant psychiatrist (DOE Psychiatrist), who diagnosed the individual with Alcohol Abuse and further concluded that “the individual’s illness, particularly in relation to his continued use of alcohol, causes or may cause a significant defect in his judgment and reliability.”

Secondly, the Notification Letter alleges that the individual “has been, or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j) (Criterion J). In this regard, Enclosure 1 again refers to the report of the DOE Psychiatrist, finding that the individual “is a user of alcohol habitually to excess - he admits getting drunk 15-20 times a year,” and that the individual “has not shown adequate evidence of alcohol rehabilitation or reformation.”

Next, DOE Security alleges under section 710.8(l) that the individual has “engaged in unusual conduct . . . which tends 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) (Criterion L). The basis for DOE Security’s concern in this respect is the individual’s disregard of the law as exhibited by various criminal charges: charged with Operating an Unsafe Vehicle, charged with having no insurance, charged with having an expired license plate, charged with Driving While Intoxicated (DWI), charged with Driving on a Suspended License, and charged with having No Proof of Financial Responsibility.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on June 10, 2002, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 11, 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, a hearing date was established. At the hearing, the DOE Counsel called as witnesses the DOE Psychiatrist, a DOE personnel security specialist and the individual. Apart from testifying on his own behalf, the individual called a supervisor as a witness. The transcript taken at the hearing will 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 will be cited as “Exh.”

## **II. Summary of Findings**

The following facts are essentially uncontroverted. The individual initially made application for a security clearance by completing a Questionnaire for National Security Positions (QNSP). In the course of completing this QNSP, the individual admitted, *inter alia*, to an alcohol-related arrest, which revealed to DOE Security that there were some issues concerning his alcohol use. Tr. at 12.

The reporting of this information led DOE Security to conduct a Personnel Security Interview (PSI) with the individual. *Id.* During the interview the individual admitted to the use of alcohol starting when he was in high school and continuing through his college years. *Id.* at 13. The individual also discussed his general drinking habits as well as his DWI in 1988. In the PSI, the individual further discussed his criminal record, which consists mainly of traffic violations.

After a review of the individual's personnel security file, DOE Security determined that due to the individual's alcohol use, a psychiatric evaluation should be conducted. The individual was then referred to a DOE Psychiatrist in February 2002 who diagnosed the individual with Substance Abuse, Alcohol. The DOE Psychiatrist further found that this illness may cause a significant defect in the individual's judgment and reliability.

### **III. Analysis**

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince 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). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518 (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 in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of whether the individual's access authorization should be granted, 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 circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of 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 determination that the individual's access authorization should be restored since I 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(d). The specific findings that I make in support of this determination are discussed below.

### **A. Criterion H, Mental Illness; Criterion J, Alcohol Use**

DOE Security alleges in the Notification Letter that the individual has “a mental condition of a nature which, in the opinion of a board-certified psychiatrist . . . may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). The Notification Letter further finds under Criterion J that the individual “has been, or is a user of alcohol to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse . . .” 10 C.F.R. § 710.8(j). I will consider concurrently the concerns of DOE Security under Criterion H and Criterion J since they are substantially interrelated. The individual’s “mental condition” which DOE Security alleges may result in “a significant defect in judgment and reliability” under Criterion H is the individual’s use of alcohol under Criterion J.

DOE Security relies upon the report of the DOE Psychiatrist in reaching its findings set forth in the Notification Letter under both Criterion H and Criterion J. Exh. 3-1 (Report of Psychiatric Evaluation, dated March 3, 2002). After reviewing the individual’s DOE personnel security file and conducting a two-hour psychiatric interview with the individual, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse as defined in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (DSM-IV). The DOE Psychiatrist points to a number of factors leading to his conclusions regarding the individual’s alcohol use, including the individual’s admission that he gets drunk 15-20 times a year. During his examination, the DOE Psychiatrist asked the individual the following: “I asked him, ‘Does intoxication mean the same thing to you as being drunk?’ He said, ‘Drunk is when you have completely lost your motor skills and speech and look very drowsy.’ I asked him, ‘Given that definition, how many drinks does it take for you to get drunk?’ He answered, ‘four to five.’ I asked him, ‘When was the last time that you were drunk?’ He answered, ‘Saturday.’” DOE Exh. 3-1. The DOE Psychiatrist concluded that “this is confirmatory evidence that he [the individual] drinks to excess.” *Id.* at 14. When asked by the DOE Psychiatrist for his definition of intoxication, the individual stated “when one starts losing their impairment, can’t walk good, drowsy, loses motor skills.” Given this definition of intoxication, the individual indicated that he was intoxicated about 100 times in the past year. According to the DOE Psychiatrist, this characterization would be considered “drinking habitually to excess.” *Id.* The DOE Psychiatrist also noted that the individual admitted to being charged with a DWI in 1988.

On the basis of the report of the DOE Psychiatrist, I find that the DOE Security properly invoked Criteria H and J in denying the individual’s security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raised important security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, aff’d, Personnel Security Review, 25 DOE ¶ 83,002(1995) (affirmed by OSA, 1995).* In these cases, it has been observed that an individual’s excessive use of alcohol might impair his judgment and reliability, and render him susceptible to pressure, coercion and duress. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Accordingly, I will turn to whether the individual has presented sufficient evidence to mitigate the security concerns of DOE relating to his use of alcohol.

## **Mitigating Evidence**

I find that the individual has presented evidence which fully mitigates the security concerns of DOE relating to the diagnosis of alcohol abuse. During the hearing, the DOE Psychiatrist stated that the principal basis for his diagnosis of Substance Abuse, Alcohol was the individual's admission to being "drunk" 15 or 20 times a year. Much of the DOE Psychiatrist's diagnosis was based on the individual's own description of his drinking patterns. Tr. at 31. In his opinion, the DOE Psychiatrist stated that being drunk on so many occasions would cause a significant defect in the individual's judgment and reliability. *Id.* In addition, the DOE Psychiatrist stated that the individual has not demonstrated adequate evidence of rehabilitation or reformation because he believes the individual is currently drinking habitually to excess and has never received any type of alcohol treatment. The DOE Psychiatrist concluded that in order to be considered rehabilitated or reformed, the individual would need to attend an alcohol treatment program and remain sober for two years. *Id.*

The individual disputes the findings of the DOE Psychiatrist. According to the individual, he was "extremely nervous" and confused when asked to define the words "intoxication" and "drunk" during his evaluation. Tr. at 40. The individual stated that he believed intoxication simply meant the presence of alcohol in your system and was not really certain about how to define the word. *Id.* at 41. He further stated that when the DOE Psychiatrist asked when was the last time the individual was intoxicated, the individual believed intoxication meant having a "buzzed feeling." *Id.* at 47. The individual maintained that feeling "buzzed" did not mean he was intoxicated. *Id.* at 49. In addition, the individual maintained that his judgment and reliability have not been impaired as a result of his drinking. He clarified that he defines drunk as a loss of his motor skills, and added that he was not drunk in that sense 15 or 20 times as stated earlier in his evaluations. Rather, the individual asserted that he has not been drunk or lost his motor skills within the last year. Finally, the individual stated that he characterizes his drinking as mild and that he primarily drinks in social contexts. Tr. at 61. He reiterated that his judgment and reliability have never been impaired from consuming alcohol other than when he was charged with DWI as a 19 year old, almost 20 years ago. He attributed this alcohol-related charge to a youthful indiscretion in college.

The individual presented a letter from his alcohol counselor, stating that the individual admitted himself to counseling "due to his confusion whether he has a personal issue with alcohol abuse." The alcohol counselor also stated that the individual "does not meet the criteria for alcohol dependency according to the DSM-IV criteria. With the same criteria, it is questionable whether he meets the alcohol abuse with a recurrent and persistent pattern." *See* Letter from Alcohol Counselor.

After hearing the individual's testimony regarding his confusion when defining the words "drunk" and "intoxicated," the DOE Psychiatrist rescinded his diagnosis of alcohol abuse and opined that the individual is a problem drinker instead. Tr. at 85. The DOE Psychiatrist stated that his assessment of the individual's personality is that he is "a seemingly very conscientious person in how you answer things . . . and so it's conceivable to me, when I talked you back in February, that even though we were defining words very specifically, that because of your concern that if you had six drinks, even though they might have been spread out over six hours, you might have been intoxicated, that it's possible that you did overestimate the degree to which the alcohol is affecting

you.” Tr. at 76. He asked the individual to describe his drinking history since he last saw the individual in February. The individual stated that he consumed one beer at a company picnic in June and a glass of wine a couple of weeks before the hearing. The DOE Psychiatrist also questioned the individual as to whether he would be capable of abiding by the guidelines of moderate drinking: no more than one drink an hour, and no more than three drinks in a 24-hour period. Tr. at 79. The individual stated that he would be able to abide by those guidelines, and added that is the pattern he currently follows. The DOE Psychiatrist, acknowledging that the outcome of the hearing depends on his opinion as to whether he believes what the individual said during the hearing, stated for the record that he believed the individual’s testimony as well as his promise to abide by the moderate drinking guidelines prescribed by the DOE Psychiatrist. Finally, the DOE Psychiatrist concluded by stating that “I’ll say, based on the information that I’ve heard, that I’ll change my opinion, and my opinion is that you’re a problem drinker but that you don’t suffer from alcohol abuse, and my very, very strong recommendation to you would be to follow the guidelines that I’ve given you.” *Id.* at 85. The DOE Psychiatrist therefore withdrew his diagnosis of Alcohol Abuse. I find that the withdrawal of the diagnosis and the underlying opinion by the DOE Psychiatrist effectively mitigates the security concerns raised in the Notification Letter with respect to Criteria H and J.

#### **B. Criterion L, Unusual Conduct**

Finally, DOE Security has asserted under Criterion L that the individual has “engaged in unusual conduct . . . which tends 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 interest of the national security.” 10 C.F.R. § 710.8(l) (Criterion L). The basis for DOE Security’s concern is the individual’s disregard for the law in the following incidents:

1. On December 1, 1996, the individual was charged with Operating an Unsafe Vehicle, Expired License Plate, No Insurance and Failure to Appear.
2. On April 8, 1996, the individual was charged with having No Insurance.
3. On September 28, 1994, the individual was charged with Expired License Plate, No Insurance, and Suspended License.
4. On December 17, 1988, the individual was charged with Driving While Intoxicated, Careless Driving, Suspended License, and No Proof of Financial Responsibility.
5. On November 16, 1988, the individual was charged with Driving on a Suspended License, No Proof of Financial Responsibility.
6. On October 31, 1987, the individual was charged with No Proof of Financial Responsibility, and Failure to Appear.

During the hearing the DOE security specialist stated that the individual's previous criminal activity is a security concern for DOE because "any time you commit an illegal activity or there is indication that illegal activities have been committed in the past, the Department of Energy has a concern whether a person is picking and choosing which laws to abide by and which laws to break." Tr. at 21. However, the DOE security specialist acknowledged that it has been six years since the individual's last criminal violation and that the six year time period could be considered as mitigation. He further acknowledged that with respect to the individual's alcohol-related charge "even though it happened in 1988 . . . we could resolve the '88 charge if there wasn't any other alcohol problem." *Id.* at 22. Finally, he noted that all of the criminal activity cited in the Notification Letter has been resolved by the individual, i.e., the individual provided a valid driver's license during the PSI as well as proof of current insurance. *Id.*

As stated earlier, the individual maintained that he does not suffer from alcohol abuse, but is a moderate drinker. He added that he has basically ceased from drinking alcohol and that he is definitely capable of abiding by the DOE Psychiatrist's guidelines for moderate drinking. In addition, the individual has been working steadily for the last two years, unlike in the previous years when he incurred the criminal violations. His supervisor testified that the individual is a good employee. Tr. at 71. The individual has resolved the issues regarding his criminal violations and appears currently to be a more responsible person. The testimony of the individual's supervisor, the DOE Psychiatrist, as well as the individual's own testimony during the hearing confirm that the individual is considered to be honest, reliable and trustworthy. The individual also impressed me with his candor, and was convincing in his testimony. Based on the record before me, I find that the time passage of six years since the individual's last criminal violation, the fact that he has resolved the criminal issues with DOE, and the DOE Psychiatrist's withdrawal of his diagnosis of Alcohol Abuse sufficiently mitigate DOE Security's concern under Criterion L.

#### **IV. Conclusion**

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(h), (j) and (l) in suspending the individual's access authorization. However, for the reasons I have described above, I find that the individual has mitigated the legitimate concerns of DOE Security. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be granted. The DOE Office of Security Affairs may seek review of this Decision by an Appeal Panel in accordance with the provisions set forth in 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Hearing Officer  
Office of Hearings and Appeals

Date: January 14, 2003

