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January 27, 2003

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 11, 2002

Case Number: VSO-0557

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx(hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy (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." 1/ A DOE Office suspended the individual's access authorization pursuant to the provisions of Part 710. 2/ As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

For many years, the individual has been employed by a DOE contractor in a position that requires him to maintain an access authorization. On September 12, 2001, the individual was arrested for "Driving While Under the Influence" of Alcohol. After the individual reported his arrest to the DOE, the DOE promptly conducted a Personnel Security Interview (PSI) with the individual to obtain information regarding the circumstances surrounding the DUI arrest and the extent of the individual's alcohol use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. The DOE consultant-psychiatrist examined the individual, and memorialized his findings in a report (Psychiatric Report or Exhibit 3). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse and does not present evidence of adequate rehabilitation or reformation. The DOE consultant-psychiatrist also found that the individual has a mental illness, depression, which is episodic. Since information creating doubt as to the individual's eligibility for a security clearance

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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

2/ On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication, and govern the present Decision.

remained unresolved after the mental evaluation, the DOE suspended the individual's security clearance and obtained authority from the Director of the Office of Safeguards and Security to initiate this administrative review proceeding.

On April 30, 2001, the DOE issued a letter to the individual which identified the individual's alcohol use and mental illness as derogatory information that cast doubt on his continued eligibility for access authorization. According to the DOE, the derogatory information fell within the purview of 10 C.F.R. § 710.8 (h) and (j). (Criteria H and J respectively.) ^{3/} On June 11, 2002, the Office of Hearings and Appeals (OHA) received the individual's request for an administrative review hearing in this matter and the OHA Director appointed me as the Hearing Officer in this case. After securing approval of the OHA Director to hold the hearing beyond the regulatory time frame specified by the Part 710 regulations, I convened a hearing in this case.

At the hearing, ten witnesses testified. The DOE called the DOE consultant-psychiatrist and a personnel security supervisor. The individual presented his own testimony and that of seven witnesses: his wife, his daughter, two co-workers, his supervisor, an addiction counselor and his physician. After the hearing, I permitted the individual to file a post-hearing submission when it became apparent that the hearing transcript in the case would be unduly delayed. I received the transcript on December 11, 2002, and closed the record in the case on December 30, 2002, when I received the individual's post-hearing submissions.

II. Regulatory Standard

A. The Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden of persuasion on the individual because it is designed to protect national security interests. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for 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).

An administrative review hearing is conducted "for the purpose of affording the individual an opportunity of supporting his 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

^{3/} Criterion H pertains to information that a person has "[a]n 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 judgement and reliability." 10 C.F.R. §710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence to mitigate security concerns.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual’s access authorization eligibility in favor of the national security. *Id.*

III. Findings of Fact

The individual has consumed alcohol for more than 20 years. Over those two decades, he has had two alcohol-related arrests. The individual’s first arrest was in 1980 or 1981 for public intoxication. At the time, the individual was a juvenile. The individual’s second arrest occurred on September 12, 2001. On the date in question, the individual arrived at a bar between 5:30 and 6:00 p.m. and drank five to six beers and a shot of hard liquor. ^{4/} See Ex. 4 at 12, 16. The individual left the bar around 9:00 p.m. that evening and attempted to drive home. A police officer initiated a traffic stop of the individual’s vehicle after the officer observed the vehicle weaving. The individual consented to the administration of a breathalyser. When the individual’s breath sample yielded a BAC of .168, the police officer arrested the individual for Driving Under the Influence (DUI). Ex. 5.

The following month, the individual pled guilty in court to a lesser charge of Driving While Alcohol Impaired (DWAI) and was sentenced to one year supervised probation, six months in jail (suspended), Level II alcohol education (24 hours in 12 weeks), 24 hours of public service, and a

^{4/} There is a discrepancy in the record regarding the number of alcoholic drinks that the individual consumed on the evening in question and the kinds of alcoholic beverages that he consumed. In the personnel security interview conducted on November 26, 2001, the individual stated that he had six beers and one shot of hard liquor. Ex. 4 at 12. During the psychiatric evaluation conducted by the DOE consultant-psychiatrist on February 5, 2002, the individual reported that he drank eight beers but no hard liquor on the night in question. For purposes of this Decision, I find that it is not relevant to determine the exact quantity and type of alcohol that the individual consumed. The only relevant fact is that the individual was considered legally drunk with a blood alcohol content (BAC) of .168 on the night that he was arrested.

fine, penalty and court costs. The individual submitted evidence demonstrating that he had completed all the terms of his sentence. *See* Exs. A-1 to A-3.

Several months after the individual's arrest, a DOE consultant-psychiatrist conducted a psychiatric evaluation of the individual at the DOE's request. Based on that evaluation, the DOE consultant-psychiatrist opined that the individual suffers from two mental conditions: alcohol abuse and a depressive disorder not otherwise specified. With regard to the alcohol abuse, the DOE consultant-psychiatrist stated that as of February 2002, the individual's illness was not in remission and that he was neither reformed nor rehabilitated from that condition. In the opinion of the DOE consultant-psychiatrist, the individual's alcohol abuse interferes with his judgment and reliability. As for the individual's depression, the DOE consultant-psychiatrist opined that it is episodic and impairs the individual's judgment when it manifests itself.

IV. Analysis and Findings

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. 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). ^{5/} After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find 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 I make in support of this decision are discussed below.

A. Security Concerns Associated with the Derogatory Information

As noted earlier in this Decision, the derogatory information in this case arises from two principal sources: two legal incidents stemming from the individual's use of alcohol, and a DOE consultant-psychiatrist's diagnosis that the individual is currently suffering from alcohol abuse and a depressive disorder not otherwise specified.

The individual's recent arrest for DUI alone demonstrates that the individual's excessive alcohol use caused him to exercise questionable judgment in operating a motor vehicle, and raises questions about his reliability and ability to control his impulses. For this reason, it is clear that the DOE properly relied on Criterion J in suspending the individual's security clearance.

^{5/} The factors enumerated in 10 C.F.R. § 710.7 (c) include the following: the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of his conduct; the age and maturity at the time of the conduct; the voluntariness of his participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for his conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

Further, it is undisputed that the individual suffers from alcohol abuse. The DOE consultant-psychiatrist, the individual's physician and his addiction counselor are in agreement on this matter. ^{6/} Moreover, the DOE consultant-psychiatrist opined, and no one has contested, that the individual meets the criteria set forth in the DSM-IV for an illness or mental condition, Substance Abuse, Alcohol, which causes or may cause a significant defect in his judgment and reliability. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis of alcohol abuse raises important security concerns. *See, e.g., Personnel Security Hearing* (Case No. VSO-0476), ___ DOE ¶ ____ (2001); *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), 25 DOE ¶ 82,755 (1995), *aff'd, Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In this case, the risk is that the individual's excessive use of alcohol might impair his judgment and reliability to the point that he will fail to safeguard classified matter or special nuclear material. Based on the considerations articulated above, it is clear that the DOE properly invoked Criteria J and H when it suspended the individual's security clearance.

As for the DOE consultant-psychiatrist's diagnosis that the individual suffers from a depressive disorder not otherwise specified, I find that the individual's depression does not raise a security concern under Criterion H.

The individual's physician testified convincingly that the individual has shown no evidence of any kind of depression. She pointed out that the individual had requested to be placed on leave without pay for 90 days beginning July 31, 2001 to attend to matters relating to his divorce from his second wife. Transcript of Hearing (Tr.) at 18, Ex. C. According to the individual's physician, someone who is depressed does not have the functional response to events and situations like the individual demonstrated in seeking leave without pay to deal with issues relating to his divorce. The physician also testified that while under her care, the individual has had to cope with the death of a family member and the serious injury of another. At no time, according to the physician, has the individual shown any signs of depression. The physician further emphasized at the hearing that the individual has shown excellent stress management skills in coping with the administrative review hearing, a skill that one with a depressive disorder does not manifest.

The record shows that the DOE consultant-psychiatrist's diagnosis of depression was based on the individual's self-reporting. At the hearing, the individual argued that the DOE consultant-psychiatrist did not accurately portray in his Report the information that he relayed during the psychiatric examination. Tr. at 143. For example, the individual stated that he told the DOE consultant-psychiatrist that he has felt "blue," not depressed, about six times in his life. Most of these feelings, according to the individual, were connected with highly stressful events like his two divorces, his DUI, and the prospect of losing his job. The individual challenges the DOE consultant-psychiatrist conclusion that the individual suffered from episodes of depression every two years. Given the

^{6/} There is, however, a divergence of opinion among the professionals about whether the individual is rehabilitated or reformed from his alcohol abuse, a subject that will be discussed in IV.B. below.

individual's age, there is no evidence in the Report or the record of this case to support the conclusion that the individual suffered from depression every two years. In the end, the individual's testimony, combined with the physician's clinical observations and testimony, persuade me that the individual probably did not suffer from any depressive disorder.

Even assuming *arguendo* that the individual did suffer from some depressive disorder not otherwise specified, I find that the DOE consultant-psychiatrist's opinion falls short of concluding that the individual's condition caused or may cause a *significant* (emphasis added) defect in judgment and reliability as required for that condition to fall within the ambit of Criterion H. At the hearing, the DOE consultant-psychiatrist testified that the individual's "depressive disorder in and of itself did not cause a defect in judgement and reliability, except as it led to alcohol." Tr. at 79. Neither the Report nor the DOE consultant-psychiatrist's testimony persuade me that any depressive disorder that the individual may have suffered from in the past rises to the level of a security concern under Criterion H. Hence, I find that Criterion H applies in this case only to the uncontested diagnosis of Alcohol Abuse.

B. Mitigating Evidence

1. Rehabilitation and Reformation

The pivotal issue in this case is whether the individual has presented evidence that he is rehabilitated and reformed from his alcohol abuse. There is a difference of opinion among the medical professionals who testified in this case about this issue.

Before discussing the experts' opinions in the case, I turn first to the lay testimony in the record that is relevant to the individual's rehabilitative efforts. That information includes testimony from the individual, his wife, and a co-worker.

a. The Individual's Testimony

According to the individual, he substantially reduced his alcohol consumption after his DUI arrest. Tr. at 145. He committed to his wife immediately after his arrest that he would never drink and drive again. *Id.* at 131. He claims that he last consumed alcohol on June 12, 2002. *Id.* at 140. As of the hearing date, he had seen an addiction counselor three times, his physician four times and he had attended eight Alcoholics Anonymous (AA) meetings. *Id.* In addition, the individual testified that he has stopped associating with friends who drink alcohol, and has stopped going to clubs and restaurants that serve alcohol. *Id.* at 132. In a notarized post-hearing submission dated December 27, 2002, the individual attests that he has maintained his sobriety since the hearing date, has continued to attend AA meetings, and has continued to attend monthly therapy sessions with an addiction counselor. Ex. E. The individual's AA sponsor also tendered a letter into the record on December 30, 2002 in which he (1) confirmed that the individual has regularly attended AA meetings, and (2) stated that the individual's commitment not to drink is very strong and that his outlook is very positive. Ex. F. Finally, the individual testified that his wife, who is a nondrinker, is extremely supportive of his efforts to maintain his sobriety. *Id.* at 140.

b. The Wife's Testimony

The individual's wife testified that after her husband was arrested for DUI, he modified his drinking habits considerably. *Id.* at 95. Specifically, she related that after his DUI arrest her husband drank beer only once each week. *Id.* at 99. In addition, she stated that her husband never drank alcohol and drove again after his DUI arrest. If the individual had a beer when he went out to dinner with his wife, his wife drove home. *Id.* at 96. According to his wife, the individual stopped drinking alcohol entirely beginning in August 2002. *Id.* at 99.

In addition, the individual's wife testified that she has accompanied her husband to therapy and AA sessions. *Id.* at 98. She attested that her husband has modified his lifestyle to maintain sobriety by no longer consuming beer while watching football games and by socializing with friends who do not drink. *Id.* at 99. Finally, the individual's wife related that she intends to be there for her husband and support him in anyway she can so that he can avoid consuming alcohol in the future. *Id.* at 98.

c. A Co-Worker's Testimony

One of the individual's co-workers testified that based on his observation, the individual is much happier since he began attending AA meetings. *Tr.* at 114. The co-worker has been friends with the individual for 10 years and has socialized with him on many occasions. According to the co-worker, the individual used to drink beer at his house when they got together to watch football. *Id.* at 115. During this football season, however, the individual has not drunk any alcohol while watching football at the co-worker's house. *Id.*

d. The Individual's Physician's Testimony

The individual's physician is a medical doctor who is board credentialed in addiction medicine and devotes approximately one-third of her medical practice to addiction medicine. *Id.* at 9. The individual became the physician's patient in August 2002 and the physician has seen the individual four times between August and October 2002. At the time of the individual's first visit, he was consuming alcohol once a week and was keeping track of his consumption by memorializing it in a notebook. *Id.* at 15-16. ^{7/} According to the physician, this kind of behavior is called "controlled

^{7/} There is inconsistent testimony in the record regarding how long the individual has abstained from consuming alcohol. As noted above, the individual's physician testified that the individual discontinued his alcohol use in August 2002. *Tr.* at 17. The individual's wife testified that the individual was drinking beer once a week up until August 2002. *Id.* at 99. The individual, on the other hand, testified that his last drink was on June 12, 2002. *Id.* at 140, 151. The individual testified that if the physician had consulted her notes she would have determined that he had not consumed alcohol since June 12, 2002. The individual claims that he was working overtime in the weeks prior to his first visit with the physician, and as a result, he had not consumed alcohol during that period. While it is true that the physician did not bring any medical records to the hearing to refresh her recollection and therefore could have erred in her testimony, I accorded much weight to the individual's wife's testimony regarding the date of her husband's last alcoholic drink. It was the individual's burden to provide corroboration for his statement that he ceased drinking in June 2002. He did not do that. Hence, I must find that the individual has abstained from alcohol since August 2002.

drinking.” *Id.* The physician testified that she convinced the individual to abstain completely from alcohol after pointing out the destructive impact that alcohol had had on his life. She also recommended that the individual join AA and consult with an addiction counselor who specializes in treating men with alcohol-related issues. *Id.* The physician testified that the individual has followed her advice on each of these matters and that she personally has observed a change in his behavior. *Id.* at 31. She testified that he is “upbeat, cooperative, and positive.” *Id.*

The individual’s physician opined at the hearing that the individual’s period of alcohol abuse has ended. *Id.* at 11. She believes that the individual has shown adequate evidence of rehabilitation from his alcohol abuse because he has been abstinent from alcohol since August 2002. She also believes that the individual has achieved reformation because he has dramatically changed his lifestyle and changed his attitude towards the use of alcohol. *Id.* at 11, 15. For example, he used to drink alcohol with his buddies while watching football games. Now he watches the games with nondrinkers. *Id.* at 26. Moreover, he attends AA and sees a therapist who deals exclusively with men’s issues. *Id.* at 17. He also uses appropriate stress-management techniques to avoid reverting to alcohol when he is placed in stressful situations. *Id.* By way of example, the physician cited the individual’s ability to cope with the death of his wife’s stepmother and the serious injury of his wife’s father in an accident during the pendency of this case.

With regard to the individual’s likelihood of relapse, the physician opined that it is “extremely slim.” *Id.* at 12. She noted that the individual has a huge support system in place, most notably his wife. She testified that lifestyle change is the key to success. While she believes that the individual has dramatically changed his lifestyle, she admitted that he would be at risk if he stops doing what he started and stopped making changes in his lifestyle. *Id.*

e. The Addiction Counselor’s Testimony

The individual’s counselor is a Level 3 addiction counselor which is the senior level counselor licensed by the State in which the individual resides. *Id.* at 50. According to the DOE consultant-psychiatrist, the addiction counselor is recognized by the relevant State as a psychotherapist. *Id.* at 71. Before the hearing, the individual had met with the addiction counselor three times. *Id.* at 51. Since the hearing, the individual reports that he has continued to see the counselor on a monthly basis. Ex. E.

The addiction counselor testified that the individual is “headed in a positive direction.” *Id.* at 54. He is attending therapy and AA sessions and has obtained an AA sponsor. *Id.* at 55. According to the addiction counselor, the individual has been candid and open during his therapy sessions. *Id.* at 56. The addiction counselor testified that the individual’s spouse has attended therapy with him, a fact that augurs for a favorable treatment outcome. The addiction counselor explained that “whenever there’s a problem with drugs or alcohol, the more people you can involve in treatment,

especially those close to him, the more favorable the treatment becomes.” *Id.* at 55. The addiction counselor concluded his testimony by stating that the individual “is in the process of making changes.” *Id.* at 71. To ensure that the individual does not relapse, the addiction counselor recommends that the individual attend AA at least once a week, attend therapy until he reaches Step 5 in his AA program, and abstain from alcohol the rest of his life. *Id.* at 68.

f. The DOE Consultant-Psychiatrist’s Testimony

The DOE consultant-psychiatrist was present in the hearing room when the individual’s physician and addiction counselor testified. After listening to their testimony, the DOE consultant-psychiatrist remained unwavering in his opinion that the individual needs one year of abstinence to achieve rehabilitation. ^{8/}

Reformation and rehabilitation, according to the DOE consultant-psychiatrist, is “a state of mind that embraces lifestyle and attitude changes.” *Id.* In the DOE consultant-psychiatrist’s opinion, the individual must remain abstinent for one year before he would evaluate whether the individual had internalized his attitude and behavior changes. He further opined that while the individual may have reduced his alcohol consumption after his DUI, the time preceding the individual’s complete abstinence from alcohol should not be considered in evaluating reformation and rehabilitation. The DOE consultant-psychiatrist explained that the individual continued to drink alcohol while he attended Level II alcohol education classes, a sign that the individual had not changed his attitude toward drinking while attending those classes.

g. Finding

In the administrative review process, the Hearing Officer has the responsibility for deciding whether an individual with alcohol problems has exhibited rehabilitation or reformation sufficient to overcome the DOE’s security concerns. *See* 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation from substance abuse, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation or reformation. *See, e.g., Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1998) (finding rehabilitation); *Personnel Security Hearing* (Case No. VSO-0106), 26 DOE ¶ 82,767 (1997), *aff’d*, *Personnel Security Review*, 26 DOE ¶ 83,009 (1997) (affirmed by OSA, 1997); *Personnel Security Hearing* (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995) (affirmed by OSA, 1995) (finding rehabilitation); *Personnel Security Hearing* (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995) (affirmed by OSA, 1995) (finding no rehabilitation).

^{8/} The DOE consultant-psychiatrist did, however, modify his opinion at the hearing with regard to whether the individual’s alcohol abuse is in remission. Prior to the hearing, the DOE consultant-psychiatrist had opined that the individual was not in remission. After listening to the individual’s experts, the DOE consultant-psychiatrist decided that the individual’s condition is in partial remission. According to the DOE consultant-psychiatrist, the individual will not be in sustained full remission until he has one year of sobriety.

When there are conflicting expert opinions, I must use my common sense in deciding what weight to accord to the differing opinions.

Based on the record before me, I cannot find that the individual is rehabilitated or reformed from his alcohol abuse. In making this finding, I considered the following factors favorable to the individual. First, I believed the individual's testimony and that of his wife, his physician, and his addiction counselor that he has changed his attitude towards alcohol and is taking steps to modify his behavior in a manner supportive of sobriety. Second, I am convinced from the record that the individual's wife is providing invaluable support to her husband in his attempt to achieve rehabilitation. Her attendance at her husband's AA meetings and therapy sessions is evidence of her active support for her husband.

At the same time, I carefully reflected on the addiction counselor's choice of words at the hearing. The addiction counselor's testimony that the individual is "headed in a positive direction," and is "in the process of making changes" signifies to me that the individual is still on the road to recovery. *Id.* at 54, 71. I noted also that the addiction counselor has recommended that the individual remain in therapy until he reaches Step 5 in his AA program. While the individual provided no evidence at the hearing regarding what step of the 12-step AA program he had completed, I infer from the record that he has not completed Step 5 since he continues to see his addiction counselor. Based on the foregoing testimony, it is clear to me that the addiction counselor does not consider the individual to be rehabilitated from his alcohol abuse.

Ultimately, the crucial factor in this case is that sufficient time has not elapsed since the individual sought treatment for his alcohol abuse and refrained from consuming alcohol for me to find that he has successfully conquered his alcohol problem. The individual had seen his addiction counselor only three times and had attended only eight AA meetings as of the date of the hearing. *Id.* at 140. Even if I were to look at the individual's rehabilitation efforts as of the time I closed the record in this case, the individual had only attended five counseling sessions with his addiction counselor and had attended AA meetings regularly for four to five months. Further, I can only find that the individual had abstained from consuming alcohol for a period of two months as of the hearing date and four and one-half months as of the time that I closed the record in this case. ^{9/} In other personnel security cases involving diagnoses of alcohol abuse, Hearing Officers have concluded that periods of sobriety ranging from five to eight months are not sufficient to mitigate the security concerns associated with alcohol abuse. *See Personnel Security Hearing*, Case No. VSO-0419, 28 DOE ¶ 82,814 (2001) (affirmed OSA, 2002) (finding eight months of sobriety not sufficient to evidence rehabilitation); *Personnel Security Hearing*, Case No. VSO-0396, 28 DOE ¶ 82,785 (2001), *aff'd*, 28 DOE ¶ 83,020 (2001) (affirmed by OSA 2001) (finding five months of sobriety not sufficient to evidence rehabilitation); *Personnel Security Hearing*, Case No. VSO-0334, 28 DOE ¶ 82,761 (2000), *aff'd*, 28 DOE ¶ 83,017 (2001) (affirmed by OSA, 2001) (finding six months of sobriety not sufficient to evidence rehabilitation); *Personnel Security Hearing*, Case No. VSO-0018,

^{9/} Even if I were to accept the individual's testimony that he consumed his last alcoholic drink on June 12, 2002, he still would have had only four months of abstinence as of the date of the hearing and six and one-half months of abstinence as of the closing of the record in this case.

25 DOE ¶ 82,758 (1995), *aff'd*, 25 DOE ¶ 83,006 (1995) (affirmed by OSA, 1995). ^{10/} In this case, the short period of the individual's sobriety combined with the testimony of the DOE consultant-psychiatrist and the individual's addiction counselor convince me that it is simply too early in the individual's rehabilitative process for me to assess the likelihood of his success in maintaining sobriety. For this reason, I find that the individual has not demonstrated that he is rehabilitated or reformed from his alcohol abuse.

2. Other factors

a. Job Performance

The individual's supervisor and two co-workers attested at the hearing to the individual's good judgment and proficiency on the job. Tr. at 113, 118, 124. Based on this testimony, it appears that the individual's alcohol consumption has not, to date, affected his ability to perform his job responsibilities. However, sobriety and reliability on the job do not overcome the security concerns. Personnel Security Hearing (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996). Excessive consumption of alcohol off the job raises security concerns because of the possibility that a clearance holder may say or do something under the influence of alcohol that compromises national security. See Personnel Security Hearing, (Case No. VSO-0106), 26 DOE ¶ 82,767, *aff'd*, Personnel Security Review, 26 DOE ¶ 83,009 (1997) (affirmed by OSA, 1997), and cases cited therein. The fact that this has apparently not occurred in the past is no guarantee that it will not occur in the future. For this reason, I cannot find that the individual's work record alone resolves the alcohol-related concerns advanced by the DOE.

b. Recency of Conduct, Age of Individual, and Voluntariness of Conduct

In evaluating the extent and seriousness of the individual's alcohol abuse problem, I noted that the individual's DUI is recent. Also, he was a mature man at the time of the DUI arrest. In addition, he knowingly and willingly chose to drive his vehicle after consuming as many as six to eight beers and perhaps a shot of hard liquor over a three to three and one-half hour period. These factors weigh against the individual.

V. Conclusion

As explained in this Decision, I find that the DOE properly invoked 10 C.F.R. § 710.8 (j) and (h) in suspending the individual's access authorization. After considering all the relevant information,

^{10/} At the hearing the individual urged me to follow the finding in Case No. VSO-0146, a case where I recommended the restoration of a person's clearance upon a showing the the individual had received appropriate therapy and had been abstinent for a period of seven months. That case is not on point, however. First, the person involved in that case was not diagnosed with either alcohol abuse or alcohol dependence. Second, the DOE consultant-psychiatrist and the experts who testified on the person's behalf all agreed that the person was reformed and rehabilitated from his habitual use of alcohol based on the particular circumstances of that case.

favorable and unfavorable, in a comprehensive and common-sense manner, I find that the individual has failed to mitigate the security concerns associated with his alcohol abuse and alcohol-related arrests. Therefore, I conclude that the individual has not yet demonstrated that restoring his access authorization would not endanger the common defense and would be clearly 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 regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: January 27, 2003