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February 20, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 18, 2002

Case Number: VSO-0577

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization. 1/ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I do not recommend restoration in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a statement of the derogatory information.

The first concern cited in the Letter involves a May 2002 evaluation letter, in which a DOE consultant psychiatrist (psychiatrist) diagnosed the individual as suffering from alcohol

1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

dependence. The Notification Letter also states that the individual drank alcohol "uncontrollably" for a period of several months, and then, after a severe overdose of alcohol in a hotel room, was admitted to a hospital in January 2000. According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j) (hereinafter Criterion (J)).

The Notification Letter also cited derogatory information which falls within 10 C.F.R. § 710.8(f) (hereinafter Criterion F). This Criterion relates in relevant part to falsification and omission of significant information when responding to a Questionnaire for National Sensitive Positions (QNSP) or a personnel security interview (PSI). The Notification Letter cited the following four concerns related to falsification or omission. First, the individual indicated on a May 29, 2001 QNSP that he had not used any illegal drugs in the prior 7 years. However, the Notification letter referred to a statement in the psychiatrist's evaluation letter to the effect that the individual had indicated during his January 2000 hospital admission that he had used marijuana on and off for three years until mid-1999. Second, the individual stated that in January 2000 he drove himself to the hospital after the alcohol binge, while hospital records showed that he arrived by ambulance. Third, the individual neglected to include in the QNSP that he had received mental health counseling for the January 2000 alcohol-related event. Fourth, the individual stated in two personnel security interviews that he was not trying to commit suicide during the January 2000 alcohol binge. However, the Notification Letter states that during the evaluation with the psychiatrist, the individual indicated that the binge was an attempt to commit suicide. Based on these omissions and inconsistencies the Notification Letter concluded that there was a Criterion F concern with respect to this individual's honesty.

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual represented himself. The individual testified on his own behalf, and presented the testimony of a psychotherapist (therapist) whom he had consulted, and that of his wife. The DOE Counsel presented the testimony of a security specialist and the psychiatrist.

II. Hearing Testimony

A. Security Specialist

The Security Specialist testified about the connection between alcohol dependence and national security. She indicated that excessive alcohol consumption may lead to the exercise of questionable judgment, unreliability, failure to control impulses and increased risk of unauthorized disclosure of classified information due to carelessness. She stated that misrepresentation and falsification give rise to concerns regarding trustworthiness, reliability and willingness to safeguard classified information. Transcript of Hearing (Tr.) at 13-14.

B. The DOE Psychiatrist

The psychiatrist reiterated the diagnosis that he reached in his May 2002 evaluation letter that this individual suffers from alcohol dependence. He based this diagnosis on the fact that the individual exhibited increased tolerance for alcohol, and had continued to use alcohol despite the fact that it caused him to experience liver problems and psychological problems. He stated his opinion that the individual should abstain from all alcohol use. Tr. at 49-57. He characterized the individual's current status as "early partial remission," and stated that his dependence is "on the mild spectrum of alcohol dependence disorder." Tr. at 83-84, 90. With respect to rehabilitation, he stated that the individual would need to demonstrate abstinence from alcohol use for a period of one year, beginning from the time of his last admitted alcohol use in October 2002. The psychiatrist also believed that the individual should attend group therapy sessions or a program such as alcoholic anonymous for a period of one year. Tr. at 125-27.

C. The Therapist

The therapist testified that he is a licensed psychotherapist who specializes in drug and alcohol abuse. Tr. at 62-64. 2/ He stated that he saw the individual for three fifty-minute sessions for the purpose of making an evaluation or diagnosis, but had not engaged in any therapy with the individual. Tr. at 68, 99. The therapist did not agree with the alcohol dependence diagnosis made by the psychiatrist. He believed the individual suffers from

2/ The therapist testified by telephone.

alcohol abuse, rather than alcohol dependence. Tr. at 79, 93, 97. In his view, an appropriate rehabilitation program for the individual would be weekly group therapy sessions for a three-month period. Tr. at 95-97. He agreed with the psychiatrist that the individual should not use alcohol in the future. Tr. at 93. He stated that he cautioned the individual that as long as he uses alcohol in any way "he runs the risk of having massive legal problems." Tr. at 96.

D. The Individual

The individual testified that he has not used alcohol since October 22, 2002. Tr. at 118. He recognizes that he has an alcohol problem, and that he needs counseling. He stated that it is his intention to begin group therapy shortly. Tr. at 119, 140. He indicated that he does not intend ever to use alcohol again, whether or not he needs a security clearance. Tr. at 121-22. He stated that in the future, when he encounters stress and problems, he will seek to resolve them through therapy, rather than using alcohol. Tr. at 122-23. 3/

E. The Wife

The wife stated that, to her knowledge, her husband has not used any alcohol since the end of October 2002. Tr. at 134. She supports her husband's efforts to recover from his alcohol problems. Tr. at 136. She stated that the only alcohol in their home is some wine and brandy that are used solely for cooking. Tr. at 135.

III. Analysis

A. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6).

3/ At the hearing, the individual introduced into evidence a letter from his supervisor which indicated that the individual is a superior worker on the job. Individual's Exh. 1.

The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or 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 Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

As discussed below, I find that the individual has not met his burden to mitigate the concerns regarding his use of alcohol and omission of significant information.

B. Criterion J

As is evident from my description of the hearing testimony, the psychiatrist and the therapist disagree on the diagnosis of this individual's alcohol use problem. The psychiatrist believes that the individual suffers from alcohol dependence, whereas the therapist believes the individual suffers from alcohol abuse.

I need not determine the precise diagnosis of this individual's condition, or which of the experts is correct. They agree that this individual suffers from an alcohol-related problem. They further agree that this individual should refrain from using alcohol in the future. They are in accord that the individual should take part in a group therapy program for alcohol users. The therapist believes that a three month therapy program would be sufficient. The psychiatrist indicated that a one year program is necessary. The psychiatrist also believes that part of the

rehabilitation showing would be a one year period of abstinence from alcohol. 4/

Based on the testimony of the individual and his wife, I believe that at the time of the hearing the individual had been abstinent for less than two months. He had also not yet begun any therapy program. Thus, while the individual has clearly made some process towards addressing his alcohol problems, I am not persuaded that he has at this time demonstrated rehabilitation from his alcohol-related disease.

As is evident from the above discussion, I cannot find that the individual has mitigated the Criterion J security concerns.

C. Criterion F

As stated above, Criterion F covers information indicating that an individual has falsified or omitted significant information in connection with a QNSP or personnel security interview. As I indicated above, the Notification Letter cited four instances of omission or falsification by the individual that represented security concerns.

First, the individual stated during a PSI that he voluntarily went to the hospital during his alcohol binge of January 2000. The Notification Letter points out that hospital records indicate he was transported to the hospital by ambulance after hotel staff, concerned about his condition, called the police. The individual explains that the January 2000 event took place over a period of two days. He admits that he was taken to the hospital by ambulance on January 23. However, he claims that his statement that he arrived at the hospital voluntarily refers to his January 24, 2000 admission, in which a family member drove him to the hospital at his own request. Tr. at 108. The record supports his contention that he was admitted to the hospital twice. DOE Exh. 11, 12, 13. Although there may have been some misunderstanding about the question, or confusion about the response, I do not find any intentional falsification here. Accordingly, the security concern regarding this statement has been resolved.

4/ While the therapist believes that the individual should permanently refrain from all alcohol use, he would not specify how long an abstinence period the individual would need to undergo in order to establish that it was unlikely that he would use alcohol in the future. Tr. at 94-95.

The next concern cited in the Notification Letter involves whether the individual failed to tell the truth regarding whether he was attempting suicide when he binged on alcohol. The Notification Letter stated that the individual told the DOE consultant psychiatrist that he was not attempting to commit suicide during his alcohol use event of January 2000, whereas the psychiatrist who admitted him to the hospital at that time believed that the individual had tried to commit suicide through an alcohol overdose.

At the hearing the individual offered another reason for his January 2000 alcohol overdose. The individual believed he was seeking to get the attention of his ex-wife, to scare her. Tr. at 109. The fact that the individual himself has not been fully lucid in describing his motivation for the drastic event of January 2000 does not seem to me to be the type of falsification covered by Criterion F. Whether or not he was or is able to recognize his motivation for the alcohol overdose of January 2000 is a complex psychological issue, one that experts might disagree about. Indeed, the psychiatrist testified that the individual's intentions regarding this event were debatable. Tr. at 52, 86. I find that the individual's inability to articulate the psychological bases for his impulses is simply not a factual matter that raises an intentional falsification concern under Criterion F. Accordingly, I find that the individual's failure to state that he was suicidal does not present a Criterion F security concern in the context of this case.

The Notification Letter also states that the individual failed to list his January 2000 mental health counseling on his May 2001 QNSP. In his November 8, 2001 PSI the individual stated that he was embarrassed by this counseling and therefore did not include it. Transcript of November 8, 2001 PSI at 76. He confirmed this at the hearing. Tr. at 112. While it is understandable that the individual may have been embarrassed, this response is not adequate in the context of this proceeding. Individuals applying for a security clearance are expected to provide full and accurate answers to the DOE regarding their status. Thus, this explanation does not resolve the Criterion F concern.

Finally, the Notification Letter states that the psychiatrist who admitted him to the hospital in January 2000 noted that the individual indicated that he had used marijuana "on and off for three years," ending about six months prior to the time of admission to the hospital. The Notification Letter indicates that individual did not reveal that usage in the 2001 QNSP. The individual denies that he stated to the admitting psychiatrist that he used marijuana six months prior to admission. The individual

could not explain how that information came to be included in the admitting psychiatrist's record. Tr. at 113-15. The statement by the admitting psychiatrist was fairly detailed and seemed specifically to relate to this individual. The individual has not convinced me that the assertion by the admitting psychiatrist was an error. Accordingly, the individual has not provided an explanation that resolves the security concern regarding this matter.

As indicated by the above discussion, I find that the individual's explanations have not resolved two of the Criterion F security concerns in this case. However, falsification concerns may also be resolved by a showing that a sustained period of time has passed during which the individual has been completely honest with the DOE regarding security matters. In this case, a period of little more than one year has passed since the individual admitted in the PSI that he was "too embarrassed" to reveal his counseling to the DOE. The discrepancy regarding the marijuana use is also still relatively fresh. Thus, at this point, I cannot find that, through the passage of time, these two issues have sufficiently faded into the past so as to resolve the Criterion F security concerns. See *Personnel Security Review* (Case No. VSA-0371), 28 DOE ¶ 83,015 (2000).

IV. CONCLUSION

Based on the foregoing, I find that the individual has not resolved the Criteria F and J security concerns cited in the Notification Letter. I therefore do not recommend that his access authorization be restored.

The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: February 20, 2003