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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing))		
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Filing Date: July 13, 2012))	Case No.:	PSH-12-0085
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Issued: November 8, 2012

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the DOE should not grant the individual access authorization.²

I. BACKGROUND

The individual is an employee of a DOE contractor and is an applicant for an access authorization. After a background investigation conducted by the Office of Personnel Management (OPM) revealed information of concern to the DOE, a Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on May 26, 2011. Exhibit 8 (PSI Transcript). After the PSI, the LSO referred the individual to a local psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. The DOE psychologist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 10 (Psychological Evaluation Report). Based on this report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 3 (Notification Letter). The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced ten exhibits into the record of this proceeding. The individual introduced four exhibits, and presented the testimony of three witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of four potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f), (j), (k), and (l) (hereinafter referred to as Criteria F, J, K, and L, respectively). Exhibit 3 at 3-11.³

Under Criterion F, the Notification Letter cites false statements by the individual on his February 16, 2011, Questionnaire for National Security Positions (QNSP) and in his May 26, 2011, PSI regarding (1) his use of illegal drugs in 2006; (2) disciplinary proceedings he was subject to in the military in 2006 and 2007, including a court-martial and other than honorable discharge; (3) substance abuse treatment he received while in the military; (4) the cause of a 2006 positive drug test for amphetamines and methamphetamines while in the military; and (5) debts he had incurred that had been turned over to a collection agency. *Id.* at 3-6.

Cited as concerns under Criterion J are (1) the individual's admissions of heavy drinking both prior to and during his military service from 2003 to 2007, and of currently drinking approximately once per month, six to seven beers per occasion; (2) a February 2007 diagnosis of alcohol abuse by a substance abuse rehabilitation program while the individual was serving in the military; (3) the opinion of the DOE psychologist in his report that the individual has a "history of Alcohol Dependence . . . in the military where daily binge drinking was the norm among his cohorts" and that "his current remission from alcohol dependence remains quite vulnerable;" (4) the failure of the individual to get treatment for his problems with alcohol use despite being advised to do so. *Id.* at 6-8.

³ Criterion H defines as derogatory information indicating that an individual has an "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 judgment or reliability." 10 C.F.R. § 710.8(h). Criterion K defines as derogatory information indicating that an individual has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k). Under Criterion J, information is derogatory if it indicates that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion L defines as derogatory information indicating that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

As support for Criterion K, the Notification Letter cites the 2006 positive drug test for amphetamines and methamphetamines while the individual was serving in the military, his admission of a one-time use of methamphetamines while on leave prior to that drug test, and his use of marijuana at age 16 or 17. *Id.* at 8-9.

Finally, cited under Criterion L are (1) the individual's admissions in his interview with an OPM investigator regarding his use of heavy use of alcohol while serving in the military, the effect of that use on his reliability, and the punishment he faced as a result; (2) false statements by the individual in the same interview regarding the reasons for and circumstances of his discharge from the military, as well as statements in the interview falsely denying any illegal drug use and minimizing his problems with alcohol; (3) military records reflecting convictions and punishments related to consumption of alcohol while enrolled in a substance abuse program, reporting to duty intoxicated, and testing positive for amphetamines and methamphetamines; (4) records reflecting an April 24, 2007, court-martial and a subsequent Other Than Honorable discharge from the military; (5) records from a military substance abuse treatment program indicating that the individual began the program in February 2007, but soon thereafter failed the program for unspecified reasons, after which the program recommended that the individual be administratively separated from military service.

The individual has not disputed the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. 10 C.F.R. § 710.27(c) (requiring Hearing Officer to "make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter").

I further find that the valid allegations in the Notification Letter adequately justify the DOE's invocation of Criteria F, J, K, and L, and raise significant security concerns. First, failure to provide truthful and candid answers during the security clearance process, of concern under Criteria F and L, demonstrates questionable judgment, lack of candor, dishonesty, and/or unwillingness to comply with rules and regulations. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (*Adjudicative Guidelines*), Guideline E.

Under Criterion J, the opinions that the individual suffered from either alcohol abuse or dependence while serving in the military, and the undisputed allegations regarding the individual's past problematic use of alcohol, raise significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *Id.* at Guideline G.

Further, any use of illegal drugs, at issue here under Criterion K, can raise questions about an individual's reliability and trustworthiness, both because drugs can impair judgment and because their use raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Id.* at Guideline H. Finally, the individual's conduct in the military related to his use of alcohol and illegal drugs, of concern under Criterion L, demonstrates questionable judgment and unwillingness to comply with rules and regulations, and therefore raises questions about his reliability, trustworthiness and ability to protect classified information. *Id.* at Guideline E.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 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). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

As discussed below in more detail, to the extent that the concerns in the present case stem from the individual’s use of illegal drugs, *per se*, I find that those concerns have been resolved, based in large part on the time that has passed since that use and, in the case of the most recent use of illegal drugs, its isolated nature. However, I cannot find resolved the concerns raised by the individual’s problematic use of alcohol and his failure to provide accurate information during the security clearance process.

A. The Concerns Stemming from the Individual’s Use of Illegal Drugs Have Been Resolved

While the individual’s use of illegal drugs, both his use of marijuana in high school and his use of methamphetamines in 2006, clearly raise concerns as noted above, I cannot find that this use would continue to pose a concern, going forward, if the individual were to be granted a security clearance. First, the individual’s use of marijuana occurred when he was 16 or 17 years old, and thus the most recent such use would have taken place in 2001 or 2002, over ten years ago. I therefore find that the concern raised by the individual’s marijuana use is resolved both by the age at which it occurred and the time that has passed since that use. *See* 10 C.F.R. § 710.7(c) (requiring consideration of “the age and maturity of the individual at the time of the conduct” and “the frequency and recency of the conduct”).

Even the individual’s most recent use of illegal drugs, his admitted one-time use of methamphetamines detected after returning to military duty from leave in November 2006, occurred nearly six years ago. Moreover, although the individual’s assertion that this was his only use of the

drug is rendered less reliable by virtue of his pattern of dishonesty discussed in more detail below, there is no evidence in the record of any other use of illegal drugs, and this fact carries greater weight given that the individual was subject to drug testing while serving in the military from 2003 to 2007, and that his behavior during this time was subject to closer scrutiny than would be that of a civilian.

In addition, the evidence in the record, including the testimony of the individual's wife, stepfather, and a cousin and pastor who spends a lot of time with the individual, indicates that the circumstances of the individual's life have changed fairly dramatically since he left military service in 2007. *See, e.g.,* Hearing Transcript (Tr.) at 16-18, 26-28. The individual, who got married while in the service, is now the father of three children, ages 3, 4, and 6, whom he has worked hard to support. Exhibit 7 at 5; Tr. at 27-28. Considering the isolated nature of his most recent use of illegal drugs in 2006, the time that has passed since, and the change in life circumstances of the individual, I do not find that this past behavior will continue to pose a security concern in the future. *See* 10 C.F.R. § 710.7(c) (requiring consideration of "the circumstances surrounding the conduct" and "the frequency and recency of the conduct").

B. The Concerns Stemming from the Individual's Problematic Alcohol Use Have Not Been Resolved

In contrast to the individual's illegal drug use, the individual's past excessive use of alcohol was long-standing, beginning in high school and continuing on a more habitual basis during his military service from 2003 to 2007. At his PSI, the individual stated that he started drinking at age 16 or 17, drinking once every two months, and on these occasions having "12 or so" drinks and getting "really drunk." Exhibit 8 at 25-26. At the hearing, the individual described his alcohol use while in the military as "very heavy," and testified that he "drank anywhere from 10 to 12 beers a day, sometimes every day throughout the week. On the weekends, I would drink until I blacked out sometimes or just drank alone sometimes." Tr. at 40.

Regarding his more recent use of alcohol, in his May 2011 PSI and his October 2011 interview with the DOE Psychologist, the individual reported drinking six or seven beers on occasions occurring approximately once a month. Exhibit 8 at 24; Exhibit 10 at 4. At the September 2012 hearing, the individual testified that, other than having one or two beers on occasion while mowing the lawn or fishing, he drank "socially on occasion" and on these occasions would drink "[p]robably six beers . . ." *Id.* at 41, 42; *see id.* at 60 (testimony of wife that the individual may have a drink while mowing the lawn, and "when we're out with friends, he probably has three at the restaurant and then three if we go to the friend's house, so that equals out to be six.")

Records from the substance abuse treatment program to which the individual was referred after his positive drug test in 2006 indicate that he was diagnosed with alcohol abuse at that time. Exhibit 9 at 50-51. Based on the individual's self-reported use of alcohol while in the military, the DOE Psychologist found in his October 2011 report, as noted above, that the individual had a "history of Alcohol Dependence (303.90) in the military where daily binge drinking was the norm among his cohorts . . ." Exhibit 10 at 4-5. The DOE Psychologist further opined that, while the individual's "binge drinking and alcohol dependence occurred in the context of self-medication for symptoms of PTSD and in the company of cohorts who demonstrated similar coping behaviors, his current

remission from alcohol dependence remains quite vulnerable.” *Id.* at 5. The DOE Psychologist concluded that, “to fully rehabilitate himself now,” the individual would need to

engage in an individual treatment that educates him as to his vulnerability to recidivism while putting in place for him a system of accountability and Harm Reduction treatment. This process would take no less than six months for [the individual] to complete. Without this treatment, he will be at risk for significant defect in his judgment and reliability.

Id.

However, having been present for the entirety of the September 2012 hearing in this matter, the DOE Psychologist stated that the concerns expressed in his report had been “substantively” met by the testimony he heard. Tr. at 85. He noted that, subsequent to their interview, the individual consulted with a Veterans Administration (VA) psychologist, and that this “suggests to me that he takes seriously the professional concerns that he’s been hearing that he’s vulnerable.” *Id.* at 70. In addition, the DOE Psychologist testified that the individual “knows he has a family history of alcoholism and has suffered from that and doesn't want the same for his children, so it's not that he needs education on the damage that alcoholism causes to a family.” *Id.* He added that the individual had “put himself in a system of accountability, that accountability being . . . family and church and . . . not a lot of alone time.” *Id.* at 70-71.

The DOE Psychologist acknowledged the “possibility if people fall out of their structures of family and church, then they're pretty vulnerable, but he has established those systems as far as it appears today. And, you know, there are resources that he has access and could access in the future.” *Id.* at 84. Regarding the individual’s current consumption of six beers on occasion, the DOE Psychologist testified that “given his history of drinking, his experience of drinking six beers is that this is entirely social, and six beers over this amount of time would not impair this fellow to the point of not knowing right from wrong.” *Id.* at 82. The DOE Psychologist concluded that, in “the current structure,” he would consider there to be a “low” risk of the individual relapsing into a pattern of drinking that would significantly affect his judgment and reliability. *Id.* at 88.

Based on the testimony of the DOE Psychologist and the other evidence in the record, I agree with the DOE Psychologist that there is a low risk the individual will depart from his current pattern of alcohol use. I am, nonetheless, not convinced that this pattern of drinking will not continue to pose a security concern. Regardless of the social context of the individual’s drinking when he consumes six beers per occasion, it appears that the individual likely drinks up to and past the point of intoxication on such occasions, by his own account. During his May 2011 PSI, the individual stated that he most recently became intoxicated three or four weeks prior to the PSI, when he drank four draft beers over a two to three hour period. Exhibit 8 at 25. Later in the PSI, he was asked how much “you think you can drink and still be in control of yourself? In other words maybe operate a vehicle or, you know, otherwise be in a safe mode?” The individual answered, “Probably three or four would be in a safe mode.” *Id.*

As noted above, the Adjudicative Guidelines identify a security concern raised by “[e]xcessive alcohol consumption,” because it “often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.”

Adjudicative Guidelines at Guideline G. More specifically, Guideline G references “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” *Id.* According to the testimony of the DOE Psychologist, the individual’s periodic consumption of six beers per occasion would constitute “binge drinking as defined by more than four drinks in a setting in an evening . . . So there is binge drinking.” Tr. at 72.⁴

Thus, whether or not drinking on a monthly basis can be described as habitual, the amount the individual consumes per occasion qualifies his behavior as binge drinking, and from the individual’s own statements, is more than sufficient to cause him to be intoxicated. Even if, on these occasions, the individual’s judgment is not impaired “to the point of not knowing right from wrong,” I find that the risk, going forward, of impairment of the individual’s judgment on a regular basis to be such that the concern raised in this case under Criterion J remains unresolved.

C. The Concerns Stemming from the Individual’s Dishonesty Have Not Been Resolved

The DOE security program is based on trust, and when a clearance holder or applicant breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *Personnel Security Hearing*, Case No. PSH-12-0059 (2012) (citing *Adjudicative Guidelines* at Guideline E). As such, the most serious concerns raised in the present case relate the individual’s lack of honesty during the security clearance process. Making these concerns more difficult to resolve is the fact that the behavior at issue was recent, occurring in 2011, and was not isolated to one context, but was repeated at several points in the process.

The false responses of the individual appear to have been primarily tailored to conceal his use of methamphetamines in 2006. First, on his February 16, 2011, QNSP, the individual denied the use of any controlled substance within the last seven years, in response to a question that listed, as a specific example, stimulants, including amphetamines and methamphetamines, despite his undisputed use of methamphetamines in 2006. Exhibit 7 at 9. Similarly, he denied ever receiving counseling or treatment, or being ordered to do so, as a result of drug use, though he was referred to a substance abuse treatment program in the military for this very reason. *Id.*

Further, in response to a question regarding whether he had been subject to “court martial or other disciplinary proceeding” during his military service, the individual stated that he had been “ordered to attend alcohol counseling” and that he received an Other Than Honorable discharge but, significantly, failed to mention his 2006 positive drug test and the resulting charges and punishment that he faced, nor did he reveal that he was subject to a court martial proceeding in March 2007. *Id.* at 4.

When interviewed by an OPM investigator on March 2, 2011, the individual denied any use of, or involvement with, illegal drugs, Exhibit 9 at 58, and described the difficulties he faced in the

⁴ The individual submitted records from his May 25, 2012, consultation with a VA psychologist. Exhibit D. Those records also described the individual’s current pattern of alcohol consumption as “binge drinking.” *Id.* at 2. In addition, the records contain a diagnosis of alcohol abuse, *id.*, though it is not clear from the records whether this diagnosis is based on his current or past use of alcohol. While the VA psychologist did not testify at the hearing in this matter, the DOE psychologist opined that the individual would not currently qualify for a diagnosis of alcohol abuse, *id.*, as that diagnosis requires “requires consequences to the binge drinking, not just the binge drinking itself.” Tr. at 69.

military only with reference to his use of alcohol. *Id.* at 55-56. Then, in his May 26, 2011, PSI, even after being confronted with the fact that the DOE had obtained records from the military regarding his positive drug test in 2006, the individual first stated that “such a small amount of anything” showed up on the drug test that it was “throw[n] out” and “that was the last I’d even heard about that, that was it.” Exhibit 8 at 33. As an explanation for the positive drug test, he stated that he had purchased over-the-counter energy pills and took a lot of them while driving to and from home while on leave. *Id.*

Asked directly in the PSI whether he had ever used illegal drugs, the individual only reported smoking marijuana in high school, *id.*, and when asked if he had tried any other illegal drug, “even once,” he stated that he had not. *Id.* at 37. It was not until the individual met with the DOE psychologist in October 2011 that he admitted that “he had impulsively smoked methamphetamines offered by a friend on one occasion just prior to” his positive drug test. Exhibit 10 at 5.

At the hearing, the individual offered no explanation for the false answers provided on his QNSP. Regarding his lack of disclosure of the charges and proceedings he faced in the military, the individual testified that he did not know why he did not disclose anything related to his methamphetamine use. “I don’t know. I just didn’t put it in there.” Tr. at 48. He contended at the hearing that he did not omit this information with intent to conceal his illegal drug use on the QNSP. *Id.* at 49. Regarding the question on the QNSP specifically pertaining to use of illegal drugs in the past seven years, he again stated that he did not know why he denied such use. “I was just basically buzzing through it and just trying to get it over with because this was probably the fourth time I had to do it and resend it in because it wasn’t never going through for some reason, I don’t know. And I just made the mistake.” *Id.* at 51.

The individual testified, more credibly in my opinion, that during his PSI, when asked directly about illegal drug use, “it really caught me off guard, and I was -- I didn’t know how to answer it because . . . I didn’t know what the outcome would be. I didn’t want to lose my job right then and there on the spot, and I just tried to cover it, and I did.” *Id.* at 52.

Considering whether concerns raised by an individual’s deliberate omission and false statements remain unresolved, hearing officers have generally taken into account a number of factors, including whether the individual came forward voluntarily to renounce his falsifications, the timing of the falsification, the length of time the falsehood was maintained, whether a pattern of falsification is evident, and the amount of time that has transpired since the individual’s admission. *Personnel Security Hearing*, Case No. TSO-0307 (2007), and cases cited therein.⁵ *See also Adjudicative Guidelines* at Guideline E (listing among potential mitigating conditions “prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”).

Of these factors, the only one that I would consider in the individual’s favor is that his false statements regarding methamphetamine use, beginning on his February 2011 QNSP, were corrected in his October 2001 interview with the DOE Psychologist, and therefore were maintained for a relatively short period of time, approximately eight months. However, I must also take into account that the individual only came forward with his admission of illegal drug use well after he was

⁵ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

confronted at his PSI with the DOE's knowledge of his 2006 positive drug test, and that prior to his admission to the DOE Psychologist he, deliberately in my opinion, concealed that use on three separate occasions, on the QNSP, in his interview with the OPM investigator, and in his PSI.

Finally, approximately one year has passed since the individual's admission of methamphetamine use. I am not convinced, however, that the individual has, in the interim, established a durable pattern of honest behavior. In particular, at the hearing, the individual continued to claim that his omission of his methamphetamine use and the charges he faced as a result from his QNSP was not intentional. Tr. at 48-49, 51. Similarly, he testified that he listed only one debt on his QNSP as having been turned over to a collection agency, though his credit report listed 30 such delinquencies, because he "just mentioned the ones that I actually knew about." *Id.* at 37-38. Given the facts before me, I do not find this testimony as to his intent to be credible, and I therefore can only conclude that the individual is not yet fully prepared to take responsibility for his behavior.

To make meaningful determinations regarding a person's eligibility for access authorization, the DOE must rely upon applicants to provide accurate information in response to any questions it may have. Based on the information in the record, including the individual's hearing testimony and the testimony attesting to the individual's honesty and trustworthiness, *see id.* at 20-21, 29-30, I cannot find that the individual has resolved the grave concern that he cannot be relied upon in this fundamental respect.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has resolved the DOE's security concerns under Criterion K, but has not resolved those concerns raised under the Criteria F, J, and L. Therefore, the individual has not demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: November 8, 2012