

* 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 XXXXXXXX's.

April 23, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 9, 2002

Case Number: TSO-0001

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an 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." As explained below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and has possessed a DOE access authorization for over twenty years. As a result of information that he disclosed to the DOE in connection with an arrest, the individual was asked for additional information at a Personnel Security Interview conducted in September 2001 (the 2001 PSI). Subsequently, the individual was referred to a psychiatrist (hereafter the "DOE Consultant Psychiatrist"), who conducted a psychiatric evaluation of the individual in March 2002. Following this evaluation, the individual's access authorization was suspended and in August 2002, the Manager of the DOE's local Operations Office issued a Notification Letter to the individual. In this Notification Letter, the Operations Office finds that the individual's information has raised security concerns under Sections 710.8(h), (j) and (l) of the regulations governing eligibility for access to classified material. With respect to Criteria (h) and (j), the Operations Office finds that the individual was evaluated by a DOE Consultant Psychiatrist, and that in a May 14, 2002 report this psychiatrist indicated his opinion that the individual suffers from Alcohol Dependence in early full remission, without adequate evidence of rehabilitation or reformation. The Operations Office also finds that the individual's alcoholism is a mental condition which in the opinion of the DOE Consultant Psychiatrist, causes, or may cause, a significant defect in the judgment or reliability of the individual.

With respect to Criterion (l), the Operations Office cites certain information as indicating that the individual engaged in unusual conduct. Specifically, the Operations Office refers to the individual's admission that he was arrested on July 11, 2001, for Larceny, and that this incident occurred while

he was intoxicated. The Operations Office also finds that just prior to this incident, the individual admits to having operated a motor vehicle while intoxicated.

The individual's request for a hearing was received by the DOE's Office of Hearings and Appeals (OHA) on October 9, 2002. In his filings in this proceeding, the individual does not deny or contest the factual basis for the security concerns set forth in the Notification Letter, or the diagnosis of Alcohol Dependence contained in the DOE Consultant Psychiatrist's Report. ^{1/} Rather, he asserts that he is continuing to abstain from alcohol, to pursue an active rehabilitation program, and to conduct himself in an honest, reliable and trustworthy manner. Accordingly, the hearing convened on this matter focused chiefly on the individual's efforts to mitigate the concerns raised in the Notification Letter. At the Hearing in February 2003, I received the testimony of the individual and three witnesses who testified on his behalf. The DOE presented the testimony of the DOE Personnel Security Specialist who interviewed the individual in September 2000 and of the DOE Consultant Psychiatrist.

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b), (c) and (d).

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the

^{1/} However, the individual does contest one piece of information provided by the DOE to the DOE Consultant Psychiatrist and cited in his Report. This Report states that "the subject had an alcohol related arrest that was resolved in a September 17, 1992 review." The individual contends that he had no alcohol related arrests prior to the July 2001 arrest for larceny. According to the DOE Counsel, the reference to the alleged 1992 arrest appeared in an OPM background investigation of the individual conducted several years ago, and that more recent background checks do not include this arrest. Hearing Transcript (hereinafter "TR") at 35. He also stated that due to the remoteness in time of this alleged arrest, it was not of concern to the DOE. TR at 20. In his testimony, the DOE Consultant Psychiatrist stated that although he considered the alleged 1992 arrest in making his diagnosis, its absence would not have changed the diagnosis of alcohol dependence and early full remission. TR at 34. Under these circumstances, I will not consider the alleged 1992 arrest in making my determination in this matter.

individual. It is designed to protect national security interests. The 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). The individual must 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). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). 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 which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. 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 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). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an 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(a). 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 and unfavorable, as to whether the granting or continuation of 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 must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. ANALYSIS

A. Criteria (h) and (j) Concerns

The DOE Consultant Psychiatrist's May 2002 Report (the Report) recounts that the individual told the DOE Consultant Psychiatrist at his March 2002 examination that for at least two years prior to his July 11, 2001 arrest for larceny, he had a strained relationship with his wife due to his increased alcohol intake. He estimated this intake to be as much as "one case [of beer] a day when I had the day off". Report at 3. He admitted that he was intoxicated on July 11, 2001 when he walked out of a grocery store without paying for what he was carrying. Following his arrest, he was taken to a hospital by family members where he underwent alcohol detoxification and other treatment. *Id.* The DOE Consultant Psychiatrist concluded that the individual displayed six of seven criteria for alcohol dependence in a twelve month period, when only three are needed for the diagnosis:

- (1) Tolerance, . . . (The subject admitted to tolerance as he said only six beers would get him drunk in his twenties while it would take a case last year to get the same feelings.) . . .
- (2) Withdrawal, . . . (He demonstrated withdrawal effects when at his brother's house and in the hospital in July 2001 when he was forced to stop drinking.) . . . (He admitted to drinking "eye openers".)
- (3) Alcohol is often taken in larger amounts or over a longer period than was intended. (He admitted often drinking more than he intended to drink last year.)
- (4) There is a persistent desire or unsuccessful efforts to cut down or control alcohol use (He did want to cut down and tried to cut back on his alcohol use.)
- (5) A great deal of time is spent: (1) in activities necessary to obtain alcohol (e.g., driving long distances), (2) in drinking alcohol, or (3) in recovering from the effects (He described how he would hide his beer in the basement and crush the cans so he could dispose of them in one sack without his family knowing.)
- (6) Important social, occupational, or recreational activities are given up or reduced because of alcohol use
- (7) Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol . . . (The subject continued drinking alcohol despite knowing of it causing a continuing problem between him and his wife.)

Report at 4-5. He also found that the individual's alcohol dependence had included physiological dependence. He found the individual to be in early full remission based on his examination and the individual's statement that he had not consumed alcohol since July 11, 2001. His evaluation is well supported and based on a full and professional assessment of the individual's personality, medical condition, and case history.

In the administrative review process, the Hearing Officer has the responsibility for making the initial decision as to whether an individual with alcohol and/or drug problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes

rehabilitation and reformation from substance abuse, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of weight to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); Personnel Security Hearing (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation).*

i. The Individual’s Abstinence

At the Hearing, the individual testified that he has abstained from consuming alcohol since July 11, 2001, and that he has committed himself to maintaining abstinence from alcohol in the future. TR at 76-77. Clearly, a commitment to maintaining abstinence from alcohol is a necessary requirement for the individual to show rehabilitation from his “Alcohol Dependence” diagnosis. As discussed below, I find that the individual has demonstrated that he has refrained from consuming alcohol since July 12, 2001, and has committed himself to a program aimed at supporting his ongoing sobriety.

The individual testified that he decided to abstain from consuming any alcohol immediately after his arrest for larceny on July 11, 2001. On July 12, 2001, he admitted himself into a local medical center to get treatment for his alcoholism. TR at 56. He was evaluated by a staff psychiatrist (the Staff Psychiatrist), who diagnosed him as suffering from alcohol dependence. He completed an intensive, sixty hour outpatient treatment program at this facility, and has followed up with regular visits to the Staff Psychiatrist, who he now sees every other month. TR at 59-60. Following the outpatient treatment, the individual attended Alcoholics Anonymous (AA) meetings for a short time, but gave it up because “it just wasn’t sinking in.” TR at 81. However, at his March 2002 evaluation, the DOE Consultant Psychiatrist advised the individual to attend AA meetings and to get an AA sponsor. The individual acted on this advice, and has attended AA weekly since March 2002, except for three occasions when he had scheduling conflicts. TR at 83. In about October 2002, he obtained an AA sponsor (the AA Sponsor). TR at 86.

As corroborative support for his continuing abstinence, the individual presented the testimony of his wife, the AA Sponsor, and a friend. His wife testified that she has been married to the individual for over fifteen years. She indicated that she and the individual XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX. She confirmed the individual’s statements to the DOE Consultant Psychiatrist and his testimony at the hearing that they had experienced marital problems in the two years prior to his July 2001 arrest, although she was not aware at that time of his increased drinking.

I didn’t know what was wrong. I just knew it was a negative feed. [The individual] was withdrawn and withdrawing, and the more I’d try to find out what was going on, he would withdraw further; and it got to the point where I quit asking, you know. I didn’t know what to do. I didn’t know what was wrong.

TR at 113. She stated that her lack of awareness of his problem drinking was because they worked on different shifts and he would be at home while she was working. TR at 112. At the time of his

arrest in July 2001, they had a frank discussion about his alcohol problem, and she encouraged him to enter a treatment program. She has participated in some of the sessions with the Staff Psychiatrist. TR at 122. She testified that her awareness of his past drinking patterns and their improved communication makes her confident that he is maintaining his sobriety.

I started looking around [for hidden alcohol]. I lifted blankets under stairs and I was more aggressive originally at making sure there wasn't any -- because I didn't know he was hiding it, so I started looking for it. But I think most significantly is his interactions with me and our openness. There was no talking about it before, but there is now. So that's how I'm confident that it's going the way he says it's going.

TR at 120. She testified that since July 2001, she has observed no signs or indications that the individual may have resumed drinking, and that she believes that he is genuinely and actively participating in AA. TR at 123. She states that they keep no alcohol in their home. TR at 125. Finally, she testified XXXXXXXXXXXXXXXXXXXXXXXXXXXX she would feel obligated to report the individual if she discovered that he had resumed drinking alcohol. However, she is completely confident that he will maintain his sobriety. TR at 130-131.

The individual's AA Sponsor testified at the hearing that he has been the individual's AA sponsor for more than three months and has observed the individual attending AA meetings on a weekly basis since March or April 2002, when the individual resumed attending AA meetings on the advice of the DOE Consultant Psychiatrist. TR at 92. He further stated that the individual seemed sincere and genuine in his participation at meetings, that his commitment to the AA program appeared to be growing, and that he was not aware of any information suggesting that the individual had consumed alcohol since July 2001. TR at 86-94.

The individual's friend testified that he has known the individual as a co-worker for more than twenty years and that they have been social friends for about twelve years. He testified that he and the individual get together socially at least three times a month to go fishing and bowling, or to dine out. He described the individual as a close and supportive friend. As a confidant of the individual, he believes that the individual probably would tell him if he were to resume drinking. TR at 110. He testified that the individual has assured him that he has not consumed alcohol since July 2001 and that he believes the individual is telling the truth. He stated that he has not witnessed the individual consume alcohol during that period. TR at 109-110.

The Staff Psychiatrist did not testify at the hearing due to a sudden illness. Instead, the individual's counsel submitted a signed declaration from the Staff Psychiatrist dated February 26, 2003. He acknowledges that the individual completed a 60 hour outpatient treatment and rehabilitation program in early November, 2002. He states that he continues to treat the individual and last examined him on January 20, 2003. With respect to the individual's ongoing rehabilitation efforts, the Staff Psychiatrist states that:

To the best of my knowledge and belief, based on representations by [the individual] and his spouse . . . , and on my personal examinations and observations of him, [the individual] has totally abstained from the use of alcohol since July 11, 2001.

To the best of my knowledge and belief, based on representations by [the individual], [the individual] has been attending Alcoholics Anonymous meetings on a regular (weekly) basis since August 2001, with the exception of an approximate four month period from December 2001 through March 2002. He currently has an AA sponsor and states that he intends to continue to participate in AA meetings indefinitely.

Declaration of Staff Psychiatrist at 1-2.

I find that the individual has provided sufficient corroboration to support his assertion that he has not consumed alcohol since July 12, 2001. The evidence he has submitted concerning his outpatient treatment program and his ongoing, active involvement in AA is supportive of his assertions of abstinence, and indicates to me that he is seriously committed to maintaining his sobriety . The testimony presented by the individual's wife convinces me that she is actively assisting him with his rehabilitation efforts. I also am convinced that she understands the importance of her husband's ongoing abstinence as a condition for the restoration of his access authorization.

Accordingly, I conclude that individual has abstained from alcohol from July 12, 2001 until the February 2003 hearing, a period of just over nineteen months.

ii. The Individual's Progress Towards Rehabilitation

As of the date of the Hearing, I find that there has been sufficient time to fully mitigate the concerns raised by the individual's prior consumption of alcohol and his diagnosis of Alcohol Dependence. In his May 2002 Report, the DOE Consultant Psychiatrist stated that at the time of his March 2002 examination, the individual was in "early full remission" from his condition of Alcohol Dependence but even though he had completed an alcohol treatment program and abstained from alcohol for approximately eight months, he was not yet rehabilitated. Report at 9. At that examination, the DOE Consultant Psychiatrist advised the individual concerning his ongoing rehabilitation efforts.

[the individual] does not now attend AA or have a follow-up appointment with his doctor. I expressed to the subject my opinion that he follow up on a regular basis with [the Staff Psychiatrist] about every two months and return to AA on a weekly basis. I suggested that these would give him a more secure "safety net" should stress in his life tempt him to go back to alcohol.

Report at 9. The testimony at the hearing convinces me that the individual immediately adopted these suggestions. In the May 2002 Report, the DOE Consultant Psychiatrist also outlined the following two courses of treatment that would provide adequate evidence of rehabilitation.

(1) Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 150 hours with a sponsor, at least three times a week, for a minimum of one year and be completely abstinent from alcohol for a minimum of one year following the completion of this program; i.e., two years of abstinence; or,

(2) Satisfactorily complete a minimum of 50 hours of a professionally led, substance abuse treatment program, for a minimum of six-months, including what is called “aftercare” and be completely abstinent from alcohol for a minimum of one and one-half years following completion of this program; i.e., two years of abstinence.

Any future resumption of drinking alcohol would be evidence that the subject is not showing adequate evidence of rehabilitation.

Report at 9-10. At the Hearing, the DOE Consultant Psychiatrist listened to the testimony of the individual and his witnesses concerning his rehabilitation activities. After listening to this testimony, the DOE Consultant Psychiatrist concluded that the individual had now shown adequate evidence of rehabilitation.

You know, I think [the individual] deserves a real congratulations. I think he is showing adequate reformation and rehabilitation. I think that continuation with AA is well worthwhile. [He’s] got a serious disorder that’s a lifetime disorder and vigilance is warranted.

TR at 132. He then explained why he believed that nineteen months rather than two full years of abstinence was adequate evidence of rehabilitation in this case.

He’s got enough support in his life that I think his chances are quite good for remaining alcohol-free. And I think that initially saying two years -- there’s nothing magic about that. Circumstances now, I think, lead me to the opinion that he is on his way to adequate -- he’s in fact there to adequate reformation and rehabilitation.

TR at 132-133. In his Declaration, the Staff Psychiatrist also finds that the individual “meets the DSM-IV-TR criterion for the diagnosis of alcohol dependence in sustained full remission, and that there is adequate evidence of [the individual’s] rehabilitation and/or reformation.” Declaration at 2.

As I stated above, the DOE makes a case-by-case determination concerning rehabilitation or reformation based on the available evidence, with substantial consideration afforded to the expert opinions of psychiatrists and other mental health professionals. In the present case, I am persuaded that the individual has completed an alcohol treatment program, is engaged in an after-care program with the Staff Psychiatrist, has developed a commitment to the AA program, and has maintained his abstinence from alcohol for nineteen months. Based on these findings and on the opinions of the DOE Consultant Psychiatrist and the Staff Psychiatrist, I find that there is now sufficient rehabilitation to mitigate the DOE's security Criteria (h) and (j) concerns regarding his diagnosis of alcohol dependence.

B. Criterion (l) Concerns

With respect to Criterion (l), the Notification Letter finds that information in its possession indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. In this regard, the Notification Letter states that

During a personal security interview (PSI) conducted with [the individual] on September 13, 2001, he admitted that he was arrested on July 11, 2001, for Larceny, and this incident occurred while he was intoxicated. He states that he drank 12-15 beers in a four-hour period, then drove himself to the grocery store.

The cited arrest and decision to drive while under the influence clearly resulted from the individual's untreated alcohol dependence. As discussed above, the individual is currently abstaining from alcohol and is rehabilitated from his diagnosis of alcohol dependence. At the Hearing, the DOE Security Specialist testified that since the underlying cause of these Criterion (l) concerns was the individual's alcohol dependence, his mitigation of his alcohol problem would also mitigate the Criterion (l) concerns. TR at 19. I concur in this opinion. I therefore find that the Notification Letter's Criterion (l) concerns are based entirely upon the Criteria (h) and (j) concern of alcohol dependence which the individual has now mitigated.

IV. CONCLUSION

For the reasons set forth above, I find that the individual suffers from alcohol dependence within the scope of Criteria (h) and (j) which has caused related Criterion (l) concerns. Further, I find that this derogatory information under Criteria (h), (j) and (l) now has been mitigated by sufficient evidence of rehabilitation. Accordingly, after considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: April 23, 2003