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June 11, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 12, 2002

Case Number: TSO-0004

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (the individual) for continued access authorization 1/ 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." The individual's access authorization was suspended by one of the Department of Energy's (DOE) Operations Offices. Based on the record before me, I have determined that the individual's access authorization should not be restored.

**I. Background**

The individual is employed at a DOE facility where his work requires him to have an access authorization. The local DOE security office issued a Notification Letter to the individual on October 8, 2002. The Notification Letter alleges under 10 C.F.R. § 710.8(f) that the individual has "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive National Security Positions." It also alleges under 10 CFR § 710.8(j) that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In addition, the Notification Letter alleges 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 interest of the national security." 10 C.F.R. § 710.8(l).

The security concerns in the Notification Letter are based on the following factual allegations. During a personnel security interview (PSI), the individual falsified significant information about his use of alcohol. The individual also violated the terms of the Employee Assistance Program Referral Option (EAPRO) by failing to meet its requirements to abstain totally from the use of

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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).

alcohol. This was a commitment upon which the DOE relied in continuing his access authorization after he was diagnosed by a DOE consultant-psychiatrist as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation. Finally, the individual was involved in a physical altercation with his wife which resulted in his arrest for simple assault and harassment.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns raised in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel called one witness, a DOE personnel security specialist. The individual called four witnesses: the individual's wife, his EAPRO counselor and two supervisors. Both the individual and the DOE submitted a number of written exhibits prior to the hearing. The DOE also submitted a post-hearing submission.

## **II. Standard of Review**

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 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. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing 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). In the present case, the individual has not convinced me that restoring his security clearance would not endanger the common defense and would clearly be in the national interest.

### III. Findings of Fact

The relevant facts in this case are uncontested. In 1993 and 2000, the individual was arrested for Driving Under the Influence. As a result of these arrests, the individual was interviewed by a personnel security specialist who referred him to undergo a complete background investigation. Hearing Transcript (Tr.) at 11-12. That investigation revealed that the individual was drinking on a weekly basis. He was therefore referred for an evaluation by a DOE consultant-psychiatrist, who diagnosed the individual as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation. *Id.* at 15, DOE Exhibit 1. The DOE consultant-psychiatrist recommended that the individual totally abstain from alcohol. He also stated that the individual could be a candidate for EAPRO, a program designed to enhance opportunities to complete rehabilitation from alcohol abuse. The individual agreed to participate in EAPRO and on March 26, 2001, he voluntarily signed the EAPRO agreement which committed him to totally abstain from alcohol. *Id.* at 16. At the time the individual signed the EAPRO agreement he was informed, as part of the normal process, that if he violated the requirements of EAPRO to abstain from the use of alcohol that his clearance would be suspended and that his case would be processed in accordance with the DOE administrative review procedures. While in EAPRO, the individual was required to participate in a plan designed to deal with his alcohol use. In June 2001, the individual signed a Continuing Care Plan (CCP) with the DOE consultant-psychiatrist and the DOE medical facility where the individual worked. As part of the CCP, the individual agreed to abide by the following six requirements: (1) abstain from alcohol; (2) submit to random alcohol testing; (3) meet with a therapist every week; (4) attend at least one AA meeting per week, or as recommended by the therapist; (5) maintain a sponsor; and (6) attend monthly meetings at the facility's medical department with the EAPRO counselor. *Id.* at 19. The individual was required to meet these conditions for two full years. DOE Exhibit 5.

In August 2001, the individual submitted a written report to DOE (a requirement according to DOE regulations) indicating that he had been arrested for assault and harassment, specifically indicating that there had been a physical altercation with his wife. DOE Exhibit 7. This incident prompted DOE security to interview the individual. During a PSI on August 21, 2002, the individual stated, *inter alia*, that he had misled his EAPRO counselor by claiming abstinence, although he had been drinking alcohol. He also stated that he had abstained from using alcohol for about eight months after signing his EAPRO agreement. However, on August 22, 2002, the individual signed and submitted a statement to DOE which indicated that he drank during the eight-month period of claimed abstinence thereby violating his EAPRO agreement. In addition, in the August 21, 2002 interview, the individual stated that he drove with a restricted license on about five occasions. However, in his August 22, 2002 statement, the individual indicated that he drove with a restricted license on numerous other occasions. DOE Exhibit 10.

## IV. Analysis

### A. Security Concerns Cited Under 10 C.F.R. § 710.8(f)

As noted earlier in this Decision, part of the derogatory information in this case arises from the individual having falsified various information during a PSI in August 2002. False statements or misrepresentations by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995), 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (*terminated* by OSA, 2000). This national security concern applies, however, only to misstatements that are “deliberate” and involve “significant” information. 10 C.F.R. § 710.8(f) (Criterion F). Based on the record before me, I find that the individual deliberately misrepresented significant information during his PSI. Consequently, DOE properly invoked Criterion F when it denied the individual’s security clearance.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual’s eligibility for access authorization. *See Personnel Security Hearing* (Case No. VSO-0244), 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review* (Case No. VSA-0154), 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). Cases involving verified falsifications or misrepresentations are nonetheless difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the misrepresentation and the individual’s subsequent history in order to assess whether the individual has rehabilitated himself from the falsehood and whether restoring the security clearance would pose a threat to national security. *See Personnel Security Hearing* (Case No. VSO-0327), 27 DOE ¶ 82,844 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,005 (2000) (*affirmed* by OSA, 2000); *Personnel Security Hearing* (Case No. VSO-0418), 28 DOE ¶ 82,795 (2001). In the end, as a Hearing Officer, I must exercise my common sense judgment whether the individual’s access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c).

### Mitigation of Criterion F Concerns

The key issue in this case is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual’s misrepresentations was serious. The individual’s lack of candor concerning an area of his life that could increase his vulnerability to coercion or blackmail raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful; this important principle underlies the

criterion set forth in 10 C.F.R. § 710.8(f). This principle has been consistently recognized by DOE Hearing Officers. *See, e.g., Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999).

After considering all the evidence before me, I believe that the individual has failed to mitigate the concerns raised by his misrepresentations during his PSI. On several occasions during his PSI, the individual was asked about his alcohol consumption. Specifically, in the August 21, 2002 interview, the individual initially denied consuming alcohol before he was arrested for simple assault on August 3, 2002. In that same interview he later admitted that he drank two beers prior to the arrest. He further indicated that he was deceptive because he was concerned that he would lose his security clearance. Tr. at 24. In addition, in this same interview, the individual admitted that he misled his EAPRO counselor by claiming total abstinence, when in fact he had been drinking, thus violating his EAPRO agreement. *Id.* at 27. In a letter the individual submitted to DOE a day after this interview, he stated that he drank during an eight-month period of claimed abstinence. DOE Exhibit 10. During the August 21, 2002 interview, the personnel security specialist specifically warned the individual about the importance of providing truthful responses before he left the interview. Nevertheless, the individual left the interview having given untruthful information. Tr. at 39. 2/

During the hearing, the individual stated that his denial regarding alcohol problems was the primary reason for his falsifications. However, he asserted that the written letter he submitted to DOE regarding his falsifications was a good faith effort on his part to correct the false information. *Id.* I find the individual's explanation for his untruthfulness to be unpersuasive. First, the individual's willingness to conceal information from the DOE in order to avoid adverse consequences is an action that is simply unacceptable among security clearance holders. *See Personnel Security Hearing*, 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995). Second, the fact that the individual was warned about the importance of providing truthful answers, but chose not to do so shows a deliberate disregard for applicable DOE rules and regulations. During the interview, the individual stated that "I have taken all of this, these proceedings serious by telling the truth." DOE Exhibit 9 at 37. I give little weight to the individual's later voluntary admissions of these falsifications in light of the opportunities he was given to be truthful during his interview. Other factors of concern to me are the following: (1) the individual's falsifications are fairly recent; and (2) the individual falsified information not on one occasion, but on several occasions, thus his falsifications are not isolated incidents. In sum, the individual's misrepresentations raise serious and unresolved security concerns. Accordingly, I find that the individual has failed to mitigate the security concerns raised by Criterion F.

## **B. Security Concerns Cited Under 10 C.F.R. § 710.8(j)**

The Notification Letter states that the individual "has been diagnosed by a psychiatrist . . . as suffering from alcohol abuse." *See* 10 C.F.R. § 710.8(j). The individual does not challenge that

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2/ As previously indicated, in the August 21, 2002 PSI, the individual stated that he drove with a restricted license on about five occasions. However, he later indicated that he drove with a restricted license on numerous other occasions.

diagnosis and admits that he is an alcoholic. This derogatory information creates serious security concerns about the individual.

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-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); *Personel Security Hearing* (Case No. VSO-0014), *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.

Since there is reliable, derogatory information that creates substantial doubt concerning the individual's continued eligibility for access authorizaiton, I need only consider below whether the individual has made a showing of mitigating facts and circumstances sufficient to overcome the DOE's security concerns under Criterion J arising from his alcohol abuse.

### **Mitigation of Criterion J Concerns**

As stated earlier, the individual admitted to violating his EAPRO commitment by failing to totally abstain from the use of alcohol for a two year period. However, the individual asserts that he has taken several positive steps to demonstrate his efforts toward rehabilitation from alcohol abuse. During the hearing, he asserted that he has completed an outpatient alcohol rehabilitation program, attended Alcoholics Anonymous (AA) meetings on a regular basis, and received various forms of alcohol counseling. Tr. at 104. The individual also asserted that he has maintained total sobriety since August 2002. He offered the testimony of his EAPRO counselor who stated that the individual has made significant behavioral changes, specifically changes in his "ability to accept his powerlessness over alcohol." Tr. at 55. The individual's EAPRO counselor added the individual has been in denial about his alcohol abuse, but now believes that he is being truthful about his abstinence from alcohol. *Id.* at 66. She further testified that based on her experience she believes a period of about two years of sobriety, AA meetings and counseling is necessary to show adequate evidence of recovery from alcohol abuse. *Id.* at 67. The individual also offered the testimony of his wife who stated that she has seen an overall good change in her husband's behavior toward alcohol. *Id.* at 104. She stated that her husband has maintained total sobriety since August 2002 and continues to attend AA and his counseling sessions. *Id.* at 104-105. <sup>3/</sup> I believe that the individual has taken several positive steps toward rehabilitation. Nevertheless, I am faced with the fact that the individual failed to satisfactorily resolve his alcohol abuse by participation in EAPRO. I cannot ignore the EAPRO counselor's opinion as well as the testimony of the DOE security specialist involved in this case that two years of total sobriety is necessary to establish adequate evidence of rehabilitation or reformation in the individual's case. Under these circumstances, I cannot find that the individual is rehabilitated or reformed from his alcohol abuse at this time.

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<sup>3/</sup> The individual also offered the testimony of his supervisors who stated that the individual was a solid employee who has not had any problems handling classified information on the job.

Consequently, the individual has not sufficiently mitigated the DOE's security concerns regarding Criterion J.

### **C. Security Concerns Cited Under 10 C.F.R. § 710.8(l); Unusual Conduct**

Criterion L relates to information indicating that an 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 national security. 10 C.F.R. § 710.8(l).

In the present case, the DOE cites the fact that the individual signed an EAPRO agreement on June 14, 2001, promising to abstain from the use of alcohol. However, the individual admitted to using alcohol on numerous occasions after signing this agreement. In addition, the DOE cites the individual's arrest for simple assault and harrassment on August 3, 2002. With regard to the latter, the record indicates that the assault at issue occurred while the individual was under the influence of alcohol. Thus, the individual must demonstrate rehabilitation or reformation from his alcohol problem in order to mitigate the concerns raised by this arrest. *See Personnel Security Hearing* (Case No. VSO-0476), 28 DOE ¶ 82,827 (2001). As discussed above, the individual has not demonstrated the requisite degree of rehabilitation or reformation. Also, the individual's breach of his EAPRO agreement, a promise made to DOE upon which DOE relied in continuing his access authorization in March 2001, is serious in nature because it demonstrates his unreliability. The DOE must rely on persons who are granted access authorization to be honest and reliable. As the personnel security specialist testified during the hearing, conduct involving questionable judgment, unreliability, untrustworthiness, lack of candor, dishonesty, or failure to obey laws and follow rules and regulations raises a concern that the individual may not safeguard classified information. Tr. at 29. Based on the foregoing, I cannot find that the individual has mitigated the Criterion L concerns at this time.

### **III. Conclusion**

As explained in this Decision, I find that the DOE properly invoked 10 C.F.R. § 710.8(f), (j) and (l) in suspending the individual's access authorization. The individual has not presented adequate mitigating factors that would alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

Kimberly Jenkins-Chapman  
Hearing Officer  
Office of Hearings and Appeals

Date: June 11, 2003