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October 21, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 22, 2002

Case Number: TSO-0009

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") to be granted 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." A Department of Energy (DOE) Operations Office determined that reliable information it had received raised substantial doubt concerning the individual's eligibility for access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the evidence and testimony in the record of this proceeding, the individual's access authorization should be granted. For the reasons stated below, I find that the individual's access authorization should not be granted.

I. BACKGROUND

The present proceeding arose after the personnel security branch of the DOE Operations Office (local security office) received a report about the individual from the Office of Personnel Management (OPM), the agency that conducts background investigations of persons seeking access authorization. The OPM report revealed that the individual had received both inpatient and outpatient treatment for alcoholism from a local hospital center. The local security office conducted a personnel security interview (PSI) of the individual in order to resolve its concerns about his alcohol use, inquiring into his history of alcohol consumption and the circumstances surrounding his treatment. Unable to resolve those concerns at the PSI, the local security office arranged for the individual to meet with a DOE consultant psychologist. The DOE psychologist examined the individual and determined that the individual suffers from alcohol dependence, in early partial remission.

On the basis of that information, the DOE Operations Office issued the individual a Notification Letter, in which it informed him of its specific security concerns regarding his eligibility for access authorization and set out his procedural rights, including his right to a hearing. The individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as hearing

officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called three witnesses: the DOE personnel security specialist who had interviewed him, the DOE psychologist, and the individual. The individual called four witnesses-- his wife, his supervisor, and two mental health professionals-- and testified on his own behalf. The record of this proceeding was closed when I received a copy of the transcript of the hearing (Tr.).

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 the 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, including knowledgeable participation; the frequency and recency of 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 granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, reliable information has raised such a question, and the individual has not convinced me that granting his security clearance will not endanger the common defense and will clearly be in the national interest.

III. FINDINGS OF FACT

The individual began drinking beer on weekends in high school, in the range of “two or three a day and maybe up to two six-packs a day.” Transcript of Personnel Security Interview (DOE Exhibit 2) at 23. With the addition of occasional mixed drinks with meals, the individual’s pattern of consumption remained fairly constant until he married in 1982. According to the individual, his consumption of alcohol lowered after his marriage, but he continued to drink beer, mostly on the weekends, and “a drink or two with dinner.” *Id.* at 26. That level of alcohol consumption remained fairly constant until 1997, when it increased to three or four drinks (generally mixed drinks) every night and even more on the weekend. *Id.* at 29. The individual

attributed the change in his drinking pattern to a number of stressful events that occurred at that time: he was working on assignments that took him away from his family for six months at a time, returning home for visits only once a month; he was experiencing excruciating back pain and undergoing surgery for it; and his teenage daughter was pregnant. *Id.* at 28. In addition to drinking socially with his wife and friends, he began to keep beer in the garage, and retreat there to work in his workshop and consume alcohol in the evenings after his wife went to bed. Tr. at 97 (testimony of wife). By December 1998, his family was aware of his behavior and confronted him about it. *Id.*

After a short period of defensiveness, the individual checked himself into an alcohol treatment center. *Id.* at 100-01. An short, inpatient course of detoxification was followed by an outpatient treatment plan that included regular attendance at treatment-center group therapy and Alcoholics Anonymous (AA) meetings and regular drug screenings, as well as family counseling sessions that his wife attended with him. DOE Exhibit (Exh.) 3; Tr. at 94. After five weeks in the outpatient program, he was discharged with favorable prognosis, contingent upon his compliance with his discharge plan, which required attendance at three AA meetings per week, sixteen weekly continuing care education group meetings, and one year of weekly continuing care support group meetings. DOE Exh. 3. The individual attended AA meetings for a few months, then stopped attending because “it was depressing” and he felt “like it was having a negative effect” on him. Tr. at 127 (testimony of individual). He also stopped attending the continuing care classes. Although he enjoyed the group, he decided that the evenings when the classes were held would be better spent attending his son’s sports events, after three years of missing them due to distant work assignments. *Id.* at 128. Other financial and family medical issues made additional demands on his time. *Id.* at 129. As the individual put it, he did not make his recovery “as high a priority as I should” have. *Id.* at 127.

After completing his treatment, the individual abstained from all alcohol for about a year and a half. *Id.* at 107 (testimony of wife). He then resumed drinking socially, both he and his wife carefully monitoring his intake in fear of it “triggering in him a desire or a need to go drink more.” *Id.* They believe that he can safely drink socially, and he did so until December 2002. *Id.* at 103-04. At the hearing, he estimated that he drank one to two beers roughly once a month between April 2002, when he saw the DOE psychologist, and December 2002, when he had one drink at Christmas and his last on New Year’s Eve. *Id.* at 122-124. During that period, he had not set abstinence as a personal goal, but rather aimed to limit alcohol consumption to special occasions only. *Id.* at 122. At those times, he intended to drink no more than two drinks of any type of alcohol, *id.* at 123, but exceeded that limit a number of times. *Id.* at 117-18. It was not until the individual received the DOE psychologist’s report that he understood that abstinence might help resolve the DOE’s security concerns about his history of alcohol abuse. *Id.* at 124. According to his wife, he stopped drinking “[t]o try to prove to DOE that he is serious about this, he wants to get his . . . clearance and [he would stop altogether] if that is what it takes.” *Id.* at 104.

At the time the DOE psychologist evaluated the individual in April 2002, the individual stated that he “would drink ordinarily two to three drinks on a weekend night or two and then he might occasionally have another drink during the day on the weekend. He also admitted that he was intoxicated approximately four to five times during the past year.” *Id.* at 45 (testimony of DOE psychologist). The DOE psychologist stated that

both the continued regular use of alcohol and the frequency of intoxication were of great concern to him because of the individual's past history. *Id.* He administered to the individual a number of standard tests, most of which placed the individual within normal limits of emotional and psychological functioning. *Id.* at 43-49. The results of one test, however, the SASSI-3, very clearly indicated a substance abuse disorder, when the individual responded to the questions with respect to his lifetime alcohol use. *Id.* at 49. */ Based on the test results and a personal interview, the DOE psychologist formulated the following opinion regarding the individual. He felt that the individual had been cooperative during the evaluation but possibly minimized his symptoms. *Id.* at 53. In any event, given his earlier diagnosis of alcohol dependence and alcohol withdrawal, his continued regular use of alcohol and his self-reported four or five intoxications in the past year gave the DOE psychologist "concern about his relapse potential." *Id.* at 54. He praised the individual's year and a half of abstinence following his treatment, but felt that he had "never shown complete recovery from his alcohol dependence," according to the most commonly accepted standards in the field. *Id.* While he admitted that addiction experts are split on the issue of whether former abusers of alcohol can successfully drink socially, he stated that the consensus of experts is that for such individuals, particularly those who work in safety-sensitive positions, "social drinking is a very risky enterprise and is not recommended." *Id.* at 55. The DOE psychologist referred to the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition (DSM-IV), to describe the intermittent nature of this disorder. According to the DOE psychologist, the DSM-IV states that alcohol dependence usually lasts for many years, and includes both periods of heavy intake and serious problems as well as periods of total abstinence or non-problematic use of alcohol. *Id.* at 56-57; *see* DSM-IV at 189. When the disease is in remission, an individual will often assure himself that he has no problem controlling his intake and begin to experiment with "gradually less restrictive rules governing the use of the substance only to experience a return to dependence." *Tr.* at 56.

The DOE psychologist's opinion was that the individual has not shown adequate evidence of rehabilitation or reformation from his disorder. *Id.* at 58. During the DOE Psychologist's evaluation of the individual, the individual also reported that he had not been involved in any sustained rehabilitation efforts for about two and one half years, and he had stopped participating in AA early in his recovery process. Psychologist's Report (DOE Exh. 1) at 6. He had stated in his report that the individual must maintain complete abstinence from alcohol for a minimum of two years "during which time he is involved in some combination of formal outpatient alcohol treatment, psychotherapy, and/or documented participation in weekly AA with a sponsor." Psychologist's Report at 6. "Adequate evidence of reformation could be achieved by 2 years of absolute sobriety [with] some combination of professional outpatient and/or AA involvement, or 3 years

*/ When the individual was asked to respond to the test questions concerning his alcohol use in the previous six months, on the other hand, it showed no symptoms that would be positive for alcohol or substance use. *Id.* at 53. The results of the DOE psychologist's short-term SASSI-3 test were "fairly similar" to those obtained in a SASSI-3 test administered at the individual's alcohol treatment center. *Id.* The DOE psychologist maintains, however, that the test has been validated when based on lifetime use but not when based on short-term use. *Id.* at 49.

of absolute sobriety.” *Id.* He also stated in his report that the individual’s resumption of drinking could not be considered evidence of reformation. *Id.* At the hearing, the DOE psychologist explained his rationale for the rather lengthy time periods of abstinence he felt were justified to establish rehabilitation or reformation in the individual’s case:

Several things. Probably most importantly the nature of the condition. It being an intermittent and oftentimes chronic disorder with lapsing episodes and denial being a hallmark of the condition. Secondly, the nature of the specific question asked me had to do with a safety sensitive type of position, which would suggest that one should take a prudent approach as opposed to a more liberal or risky approach in formulating recommendations. Thirdly, a very common figure that is talked about is two years of sobriety in the field. I guess I would add to that: in working with impaired professionals and others in managerial or safety sensitive positions, the usual standard of care is complete abstinence with professional monitoring.

Tr. at 58-59. After diagnosing the individual as suffering from alcohol dependence in early partial remission, without adequate evidence of rehabilitation or reformation, the DOE psychologist concluded that the individual “would be well served to have professional consultation on relapse prevention practices, and may benefit from professional monitoring of these. That [the individual] previously achieved up to 1-1/2 years of abstinence suggests that his prognosis is good for a more full and sustained recovery if he seeks additional help and applies sufficient motivation and effort toward these goals.” Psychologist’s Report at 6.

At the hearing the individual presented the following evidence regarding his involvement with alcohol since April 2002, when the DOE psychologist evaluated him. Both he and his wife testified that he continued to drink socially until December 2002, when he had his last drink on New Year’s Eve. Both stated that it was not until he received the DOE psychologist’s report that he realized that the DOE felt it was necessary to abstain completely, and at that time he stopped drinking to show that he was rehabilitated. Tr. at 95, 103-04 (spouse’s testimony), 122-24, 140 (individual’s testimony). Before he received the DOE psychologist’s report, he had never set abstinence as a goal; rather his intent was to drink only on special occasions. *Id.* at 122. Again based on the DOE psychologist’s opinion, he has also returned to his continuing care program, attending meetings once or twice a week. *Id.* at 126. He intends to remain abstinent and continue attending the outpatient program for the next one to two years. *Id.* at 167-68.

In his testimony, the individual also elaborated on the stresses he faced during the period 2000 to 2002. As mentioned before, his work was taking him away from home for long periods of time, he was suffering from severe back pain that ultimately required surgery and a difficult recuperation, and his teenage daughter became pregnant. He stated that the summer and fall of 2002 were particularly stressful for him--with problems ranging from long absences from home for work reasons, his daughter’s messy divorce, and his daughter and young grandson living with him, to identity theft, his wife’s illness and reduced wages, and three out of four family cars breaking down. Nevertheless, and to his credit, the individual pointed out that in spite of these stresses, he has not resorted to alcohol to “deal with any of these things.” *Id.* at 131. By this,

he means that he has not become inebriated. I note that the period he described was when he was still drinking socially, before he decided to abstain altogether. Nevertheless, he maintains that he has not had a drink since he decided to stop drinking. *Id.* at 124; *id.* at 95 (testimony of spouse).

The individual also introduced expert testimony concerning his alcohol involvement. A licensed clinical social worker testified that she had recently administered a SASSI-3 evaluation to the individual. *Id.* at 158. A certified SASSI administrator, she has attended a number of SASSI Institute workshops on clinical interpretation. *Id.* at 165. She testified that she evaluated the individual, using this tool, on the basis of his involvement with alcohol since his rehabilitation efforts in 1999. *Id.* at 161. She stated that if one considers the lifetime practices of an alcohol consumer when evaluating him under the SASSI-3, as the DOE psychologist did, the test results will always indicate a substance abuse disorder, because the test “does not allow for any evidence of rehabilitation if you have had heavy alcohol consumption at one time.” *Id.* at 159. However, if one takes into account only the years since his rehabilitation efforts, as she did for the individual, “he did not test positively for either” substance abuse dependence or substance abuse disorder. *Id.* She disagreed strongly with the DOE’s argument that the SASSI-3 test questions produce valid results only when applied to the subject’s lifetime practices. *Id.* at 160, 162-63. She further testified that she had led the group therapy program that the individual attended in 1999. *Id.* at 158. Her understanding was that the individual was currently abstaining from alcohol and attending a continuing care program, and that these two activities constituted an appropriate rehabilitation plan in her opinion. *Id.* at 164. Finally, she stated that based on her personal knowledge of the individual, she felt that he could succeed in drinking socially should he decide no longer to abstain. *Id.* at 166.

The individual’s alcohol and drug counselor also testified at the hearing. This professional treated the individual in 1999 and is also seeing him now. He testified that the individual was his patient in an intensive outpatient program in 1999 that consisted of education sessions based on the twelve-step recovery process, daily group therapy sessions, additional daily education sessions in coping skills or relationship building, and weekly family sessions. *Id.* at 144. After the individual successfully completed this program, he participated in a “continuing care” program of once-weekly sessions for about two months. *Id.* at 148. The counselor noted that the typically recommended period for participating in continuing care is one year. *Id.* at 150. The counselor recalled that the individual was straightforward in his approach to treatment, and he felt that the individual’s prognosis for recovery was currently very favorable, particularly because he had resumed participation in continuing care. *Id.* at 148, 150. As a counselor, he was unwilling to pronounce whether the individual was rehabilitated from his alcohol disorder. Nevertheless, the counselor considered the individual on the path to recovery. *Id.* at 152-53. Although it appeared that the individual had resumed alcohol use responsibly, the counselor expressed his opinion that those who resume drinking, then later determine that such behavior is risky and “use that as motivation to remain or resume their recovery, I think are extremely successful.” *Id.* at 153. On the other hand, when questioned whether resuming alcohol use was appropriate for someone in the continuing care portion of the program, the counselor replied, “[T]he recommendation is certainly that of continued abstinence. I don’t ever advocate to a patient that maybe you should drink socially and see how that goes for you. The recommendation would be that of abstinence.” *Id.* at 156.

IV. ANALYSIS

In the Notification Letter the local security office states that it had received information that indicated that the individual “is a user of alcohol habitually to excess, or has been diagnosed by a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” *See* 10 C.F.R. § 710.8(j) (Criterion J). The local security office further maintains that “[h]is alcoholism is an illness or mental condition which in the opinion of a licensed clinical psychologist causes, or may cause, a significant defect in [his] judgment or reliability.” *See* 10 C.F.R. § 710.8(h) (Criterion H). The DOE psychologist stated in his report that the individual was alcohol dependent, in early partial remission, with poor relapse prevention practices, and without adequate evidence of rehabilitation or reformation. The DOE psychologist also expressed his professional opinion in that report that the individual has “an illness or mental condition (Alcohol Dependence, Early Partial Remission with poor relapse prevention practices) which may cause a significant defect in judgement or reliability– at least until he shows evidence of adequate rehabilitation or reformation.” Psychologist’s Report at 7. The personnel security specialist testified that the DOE’s security concern that arises when an individual suffers from substance dependence is that alcohol abuse or dependence can reduce the individual’s ability to make responsible judgments and decisions regarding properly protecting classified information and performing work related to such information. Tr. at 26.

Since there is reliable, derogatory information that creates a substantial doubt concerning the individual's eligibility for access authorization, 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 Criteria J and H. Because the hearing officer may recommend that an individual’s access authorization be granted only if it “will not endanger the common defense and security and will be clearly consistent with the national interest,” 10 C.F.R. § 710.27(d), the individual must provide convincing evidence mitigating those security concerns. The individual has not disputed the DOE psychologist’s opinion as it was presented in the report. The sole issue, then, is whether, in the ten months between the evaluation and the hearing, the individual has achieved adequate rehabilitation or reformation that mitigates the local security office’s concerns. The DOE psychologist set forth in his report his opinion as to what the individual must do to achieve adequate rehabilitation or reformation: two years of abstinence from alcohol, provided the individual “is involved in some combination of formal outpatient alcohol treatment, psychotherapy, and/or documented participation in weekly AA with a sponsor,” or three years of “absolute sobriety” unaccompanied by any rehabilitation program. Psychologist’s Report (DOE Exhibit 1) at 6. Based on the evidence presented in this proceeding, I believe his rehabilitation and reformation plans to be correct. While the required periods of abstinence extend beyond the one year frequently cited in our decisions, *see, e.g., Personnel Security Hearing* (Case No. VSO-0534), 28 DOE ¶ 82,871 (July 18, 2002), I do not find the DOE psychologist’s opinion to be inappropriate in light of the individual’s history and the testimony of the individual’s expert witnesses. The licensed clinical social worker testified that the individual’s current practices of abstention and therapy constituted a viable rehabilitation plan. The alcohol and drug counselor considered the individual on the path to recovery. Nevertheless, neither of his expert witnesses concluded that he had achieved rehabilitation or reformation from his alcohol dependence at the time of the hearing. *See, e.g.,* Tr. at 152-53.

The critical history of the individual's alcohol consumption behavior can be summarized as follows. After a period of hospitalization for alcohol dependence in 1999, the individual abstained from alcohol for about a year and a half, and participated in therapeutic counseling for a short time. Then he consciously began drinking alcohol again. During that period, from mid-2000 to December 2002, he drank more than he intended to, though on a relatively small number of occasions. In December 2002 the individual decided to abstain from all alcohol and return to counseling. As of the date of the hearing, the individual had been abstinent for about five weeks and had been attending counseling sessions for about four weeks. The medical testimony presented at the hearing, although not monolithic in its opinion, convinces me that in light of the individual's personal history of alcohol involvement, he should not be drinking alcohol in any context. Therefore, the only behavior that I can consider in mitigation of his alcohol dependence is his recent program of abstinence and counseling. Yet this plan of action was barely one month old at the time of the hearing. Although the medical experts seemed to agree that the current program could achieve rehabilitation or reformation over the long term—two or three years, respectively, in the opinion of the DOE psychologist—none was able to state that the individual was rehabilitated or reformed at the time of the hearing, and I find myself persuaded by the wisdom of that assessment.

After considering all the evidence in the record, I cannot find that the individual is rehabilitated or reformed from his alcohol dependence at this time. The individual has not demonstrated in the course of this proceeding that the risk of relapse to excessive alcohol consumption is acceptably low. Consequently, the individual has not mitigated the DOE's security concerns under Criteria H and J regarding his history of alcohol dependence.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not presented evidence that warrants granting his access authorization. The individual has not demonstrated that granting his security clearance will not endanger the common defense and will be clearly consistent with the national interest. Therefore, the individual's access authorization should not be granted.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: October 21, 2003