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

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 26, 2002

Case Number: TSO-0011

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 1/ A DOE Office suspended the individual's access authorization pursuant to the provisions of Part 710. 2/ As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

**I. Background**

For several years, the individual has been employed by a DOE contractor in a position that requires him to maintain an access authorization. In the early afternoon of June 7, 2002, the individual was arrested for "Aggravated Driving While Intoxicated and Leaving the Scene of an Accident without Notifying the Owner of the Vehicle" (DWI arrest). After the individual reported his arrest to the DOE, the DOE promptly conducted a Personnel Security Interview (PSI) with the individual to obtain information regarding the circumstances surrounding the DWI arrest and the extent of the individual's alcohol use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. The DOE consultant-psychiatrist examined the individual, and memorialized his findings in a report (Psychiatric Report or Exhibit 8). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual is both alcohol dependent and a user of alcohol habitually to excess. The DOE consultant-psychiatrist also found that the individual does not present evidence of adequate rehabilitation or reformation.

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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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

2/ On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication, and govern the present Decision.

Subsequently, the DOE initiated formal administrative review proceedings. First, however, the DOE informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the DOE described this derogatory information and explained how that information fell within the purview of four potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j, f and l (Criterion H, J, F and L respectively). <sup>3/</sup>

To support its Criteria H and J concerns, the DOE cites the following:

- C In April 2002, the individual began taking Serax, a prescription medication designed to prevent the jitters associated with alcohol withdrawal.
- C The individual admitted during the PSI that prior to his DWI arrest, he had consumed approximately one to one and a half inches of straight vodka from a breakfast mug in a thirty second period.
- C A Breath Alcohol Test (BAC) test administered to the individual shortly after his arrest on June 7, 2002 showed a significantly elevated blood alcohol level of .23 with a confirmatory test of .21. The legal limit in the State which the arrest occurred is .08.
- C A psychiatrist opined that given the individual's height and weight, the individual would have had to consume eight or nine shots of vodka to register a .23 or .21 BAC.
- C After his June 7, 2002 DWI arrest, the individual began taking the prescription drug Antabuse to prevent him from consuming alcohol. Even though Antabuse causes nausea and vomiting if taken with alcohol, the individual claims he was able to consume some alcohol while taking the Antabuse.

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<sup>3/</sup> Criterion H pertains to information that a person has “[a]n 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 J relates to information that a person 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 F relates to information that a person “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through §710.30.” 10 C.F.R. § 710.8(f). Criterion L concerns information that a person 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

- C The individual admitted during the psychiatric interview that (1) he has been drinking half a quart of hard liquor daily for years; (2) his wife has poured out all the hard liquor at home; (3) he has 100 bottles of wine at his house; (4) he has a bottle of vodka hidden in the house; and (5) he was still drinking at the time of the psychiatric evaluation, noting that 10 days prior to the examination he had consumed an ounce of vodka in the middle of the night.
  
- C Medical records show that (1) the individual had a history of alcohol abuse, alcohol withdrawal and alcoholic hepatitis; and (2) the individual's physician had discussed alcoholic liver disease and alcoholic cirrhosis with the individual.
  
- C The individual's wife and children complained of his excessive drinking.
  
- C A psychiatrist opined that the individual (1) meets the criteria for Substance Dependence, Alcohol with Physiological Dependence, Active as those terms are defined in the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR); (2) is a user of alcohol habitually to excess; and (3) suffers from an illness, Substance Dependence, Alcohol, which causes, or may cause a significant defect in judgment or reliability.

To support Criterion F, the DOE cites statements made by the individual during the PSI which are inconsistent with documentary evidence in the record. For example, during the PSI in August 2002, the individual stated that he had been sober since two weeks after his June 2002 DWI arrest. Yet medical records dated August 1, 2002 reflect that the individual had been cutting down on his Antabuse dose and trying to sneak at least one drink each day. In addition, during the PSI the individual stated that no one outside his family ever told him that he had a problem with his alcohol consumption yet medical records show that his physician thought he had a problem and recommended alcohol counseling on several occasions. Finally, the individual admitted during the PSI to drinking three to four alcoholic beverages a night and perhaps a Margarita on the weekends. The record, however, indicates that the individual has been drinking a half quart of hard liquor daily for at least the last several months and perhaps years.

As for Criterion L, the DOE relies on the following information as the bases for its security concerns: (1) the individual's DWI arrest and subsequent BAC of .23 and .21; (2) the individual's failure to realize that he had hit another car with his car after he had consumed a significant amount of vodka in the middle of the day; and (3) the individual's belief that he was not intoxicated at the time of the DWI arrest despite the determination by police that a field sobriety test needed to be terminated prematurely because the individual could not perform the test safely in view of his condition.

On November 26, 2002, the Office of Hearings and Appeals (OHA) received the individual's request for an administrative review hearing in this matter and the OHA Director appointed me as the Hearing Officer in this case. Subsequently, I convened a hearing in this case within the regulatory time frame specified by the Part 710 regulations.

At the hearing, five witnesses testified. The DOE called the DOE consultant-psychiatrist and a personnel security supervisor. The individual presented his own testimony and that of his wife and his manager. The DOE submitted 15 exhibits into the record; the individual tendered two. After the hearing, I allowed the parties to submit their closing statements in writing. The individual tendered his post-hearing closing statement on March 3, 2003. The DOE Counsel waived her right to file a closing statement. On March 31, 2003, I received the hearing transcript (Tr.) at which time I closed the record in the case.

## **II. Regulatory Standard**

### **A. The Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden of persuasion on the individual because it is designed to protect national security interests. 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 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).

An administrative review hearing is conducted “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 DOE Security has made a showing of derogatory information raising security concerns, the individual must come forward at the hearing with evidence to convince the DOE that restoring 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). 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 to mitigate security concerns.

### **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of a person's 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 am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

### III. Findings of Fact

The individual began consuming alcohol to excess sometime in 1996. Tr. at 17. According to the individual's wife, her husband drank at home, alone, and late in the evening. Tr. at 17-18.

By 2002, the individual was drinking one half pint or more of hard liquor everyday. Ex. 7 at 9. <sup>4/</sup> In April 2002, the individual's alcohol consumption had so negatively impacted his health that he spent one week bedridden at home. Tr. at 99, Ex. 13 at 74. This health crisis prompted the individual to consult his family physician. Ex. 7 at 9. At the instruction of his physician, the individual began taking the prescription Serax, a medication frequently used to help minimize alcohol withdrawal symptoms. *Id.*, Ex. 8 at 14, n. 15. In late April 2002, the individual's physician diagnosed him as suffering from alcoholism and alcohol withdrawal, and urged him to seek alcohol counseling. Ex. 7 at 9, Ex. 8 at 14, n. 15.

In early May 2002, liver enzyme tests administered to the individual revealed substantially elevated SGOT (Serum Glutamic Oxaloacetic Transaminase) and SGPT (Serum Glutamic Pyruvic Transaminase) levels. Ex. 7 at 8, 29. <sup>5/</sup> Medical notes dated May 3, 2002 indicate that the individual reportedly had stopped drinking entirely as of that date. *Id.* The record indicates, however, that the individual resumed drinking the following week. *Id.* at 7. At this time, an ultrasound performed on the individual revealed fatty liver disease prompting the individual's physician to increase the individual's Serax dosage and urge the individual to stop drinking. *Id.* The individual did stop drinking for a short period and his liver function tests improved markedly. *Id.* at 6. At this time, his physician urged him once again to seek counseling as he had not done so as of the end of May 2002. *Id.*

The incident that thrust the individual's excessive alcohol consumption into the public arena occurred on June 7, 2002. Around 10:45 a.m. that day, the individual left work and drove to a liquor store where he purchased at least a fifth of vodka. Ex. 13 at 14-15. <sup>6/</sup> While still in the liquor store parking lot, the individual poured "maybe one and one-half inches" of vodka into a cup and drank it. *Id.* at 18. The individual then drove to a credit union parking lot where he hit an unoccupied car with his vehicle. Ex. 118, 13, 17, 19. Unaware that he had been involved in an accident, the individual entered the credit union to transact business. Ex. 21. When the owner of the struck vehicle

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<sup>4/</sup> There is conflicting information in the record regarding the individual's alcohol consumption pattern in the months preceding his DWI arrest. At the hearing, the individual testified that in April 2002 he was drinking one-half pint or more of vodka each night. Tr. at 86. Medical notes dated April 30, 2002, however, reflect that the individual had been drinking one-half quart of hard liquor daily for several months. Ex. 5 at 9.

<sup>5/</sup> The individual's SGOT was 778. The normal range for SGOT is reported as 3 to 70. *Id.* His SGPT was 614 with a normal range reported as 3 to 70. *Id.*

<sup>6/</sup> There is discrepancy in the record about the quantity of vodka that the individual purchased on the date in question. During the PSI, the individual stated that he capped the fifth of vodka after drinking some of it and placed the bottle in the trunk of his car. Ex 13 at 14. However, in the police report relating to the incident, the officer writes that she took an inventory of the contents of the individual's car after his arrest. Among the items found in the trunk of the car was an "open half gallon of vodka." Ex. 11 at 8, 11.

returned to his car, a witness to the accident informed the owner of what he had observed. *Id.* The owner of the car struck by the individual's vehicle called police. Ex. 11 at 13.

The officers who responded to the call documented their observations of the individual when they arrived on the scene. They noticed "an odor of alcoholic beverage emitting from his person, his eyes were red and he was visibly shaking." *Id.* at 17. Even though the individual consented to a field sobriety test, the officers concluded that they should terminate the test prematurely finding that it was unsafe to administer those tests in view of the individual's condition at the time. *Id.* Immediately thereafter, the officers advised the individual that he was being detained for suspicion of driving under the influence of intoxicating liquor and or drugs and transported him to the police station. *Id.* Once at the police station, the police administered an intoxylizer test to the individual. When the BAC levels registered .23 and .21 respectively, the police placed the individual under arrest for DWI.

One week after the DWI arrest, the individual began taking Antabuse under the supervision of his physician. Ex. 7 at 5. At the same time, the individual's physician urged him again to see an alcohol counselor. *Id.* Even though Antabuse causes nausea and vomiting when taken with alcohol, the individual admitted at the hearing and during the psychiatric examination to consuming alcohol several times while taking the drug. 7/

#### **IV. Analysis and Findings**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 8/ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

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7/ The individual admitted to drinking four or five times in June and July 2002 while on Antabuse, and at least once in August 2002 while on the medication. Ex. 8 at 19, Tr. at 27.

8/ The factors enumerated in 10 C.F.R. § 710.7 (c) include the following: the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of his conduct; the age and maturity at the time of the conduct; the voluntariness of his participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for his conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

## **1. The Derogatory Information at Issue and Associated Security Concerns**

### **A. Criterion H**

To justify Criterion H as one of the bases for suspending the individual's security clearance, the DOE relied on the opinion of a board-certified psychiatrist who determined that the individual is a user of alcohol habitually to excess and alcohol dependent. I find that the DOE-consultant psychiatrist clearly articulated in his Psychiatric Report and convincingly testified at the hearing that the individual meets the definition of Substance Dependence, Alcohol with Physiological Dependence, Active as those terms are defined in the DSM-IV-TR. Further, I determine that the DOE consultant-psychiatrist provided compelling reasons why he found that the individual's mental illness causes or may cause a significant defect in his judgment and reliability. A mental condition such as Alcohol Dependence is a serious security concern because it raises questions about a person's judgment, reliability and stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710.

### **B. Criterion J**

As for Criterion J, I find that the DOE had ample bases for relying on this criterion to suspend the individual's clearance. The record indicates that the individual's excessive consumption of alcohol began sometime in 1996. For several months preceding his DWI accident, the individual consumed as much as a quart of hard liquor every day. Medical documentation shows that the individual's alcohol consumption had a deleterious effect on his health. Test results from May 2002 indicate that two of the individual's liver enzymes were elevated almost ten times the normal values. An ultrasound of the individual's liver in May 2002 revealed fatty liver disease. According to the DOE consultant-psychiatrist, this alcoholic fatty liver is a precursor to cirrhosis of the liver, a potentially fatal condition. Ex. 8 at 17, n. 28. The individual's medical records also reveal that the individual was taking a prescription medication prior to his DWI arrest to ease alcohol withdrawal symptoms. According to those medical records, the individual's physician prescribed the medication because the individual had been bedridden for a week due to excessive alcohol consumption.

By June 2002, the individual was unable to control his drinking even while on medication. On June 7, 2002 at mid-day, the individual consumed a significant quantity of vodka that rendered him intoxicated at a level three times the legal limit. He was so mentally impaired due to his inebriated state on the date in question that he hit another car with his vehicle without realizing it. It was also due to the degree of his mental impairment that the police prematurely terminated the field sobriety test on the ground that it was unsafe to continue. The record further shows that the individual continued to consume alcohol after his DWI arrest, even while taking Antabuse, a prescription drug designed to cause severe illness if alcohol is consumed with it. The record also shows that the individual's drinking habit negatively impacted his family life. In addition, the evidence shows that the individual's wife and children complained about the individual's drinking even going so far as to dispose of all the alcohol they could find in the house. Finally, the psychiatric diagnosis that the individual suffers from alcohol dependence and consumes alcohol habitually to excess also lends support to the DOE's reliance on Criterion J in this case.

As the personnel security specialist testified at the hearing, excessive consumption of alcohol is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk that classified information will be unwittingly divulged. Tr. at 50-51. My review of the factual underpinnings for Criterion J convinces me that the legitimate security concerns articulated by the personnel security specialist in this case exists with regard to the individual's alcohol consumption.

### **C. Criterion F**

Information provided by the individual during a PSI which is inconsistent with other information in the record forms the basis for the DOE's reliance on Criterion F in this proceeding. All the conflicting information relates to the individual's use of alcohol. Specifically, the conflicting information concerns whether and when the individual stopped drinking, how much alcohol the individual routinely consumed, and whether persons other than family members complained about his excessive alcohol use. At the hearing, the individual provided no explanation for his inconsistent statements that would allow me to find that they were made in error or not otherwise deliberate in nature. Since information about the individual's alcohol usage was material and relevant to the issues under scrutiny by the personnel security specialist, I find that the information was "significant" for purposes of 10 C.F.R. § 710.8 (f). In the end, I find that the individual tried to conceal potentially damaging information about his alcohol consumption by deliberately misrepresenting significant information during the PSI. The individual's lack of candor during the PSI is a serious security concern because the behavior raises questions about whether the individual can be trusted in the future to comply with rules and regulations and safeguard classified information. Accordingly, I find that the DOE properly relied on Criterion F as a basis for suspending the individual's security clearance.

### **D. Criterion L**

The DWI arrest and the totality of the circumstances leading up to the individual's arrest justify the DOE's reliance on Criterion L as one of the bases for suspending the individual's security clearance. It is clear from the record why the DOE would question the individual's judgment and reliability from a security context. The individual consumed alcohol to excess in the middle of the day. He operated a motor vehicle while so mentally impaired that he did not realize that he had been involved in an accident. He chose to consume one to one and one-half inches of vodka in the middle of the day which resulted in his DWI arrest. He erroneously perceived that he was not intoxicated at the time he was detained by the police despite a determination by the police that a field sobriety test could not be continued safely in view of the individual's condition. Finally, the individual's BAC tests yielded positive results for alcohol at levels almost three times the limit established by State law.

## **2. Mitigating Evidence**

All four of the criteria at issue are inextricably intertwined, and stem from the individual's excessive alcohol use. The pivotal issue in this case is whether the individual is rehabilitated or reformed from his alcohol dependence and habitual use of alcohol to excess.

**a. Rehabilitation and Reformation**

The DOE consultant-psychiatrist opined that there are several avenues the individual might choose to pursue that could result in his rehabilitation or reformation from his alcohol dependence and his habitual, excessive use of alcohol. See Ex.8 at 27-28; Tr. at 65-72. Specifically, to demonstrate adequate evidence of rehabilitation, the individual could either: (1) produce documented evidence that he has attended 100 hours of Alcoholics Anonymous (AA) with a sponsor one time per week for a minimum of one year **and** be completely abstinent from alcohol and all non-prescribed controlled substances for minimum of one year following the completion of the program (two years of sobriety); or (2) satisfactorily complete a minimum of 50 hours of a professionally led, substance abuse treatment program, for a minimum of 6 months, including “aftercare” **and** be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of one and one-half years following the completion of this program (two years sobriety). To demonstrate adequate evidence of reformation, the DOE consultant-psychiatrist posits two alternatives: (1) if the individual completes one of the two rehabilitation programs set forth above, then two years of absolute sobriety would be necessary to show adequate evidence of reformation; or (2) if the individual chooses not to participate in either of the two rehabilitation programs set forth above, three years of sobriety would be necessary to show adequate evidence of reformation.

At the hearing, the individual testified that he stopped drinking in September 2002. Tr. at 11, 79. He also testified that he is currently in an intensive outpatient treatment program and has started attending AA. *Id.* at 78. He provided a letter from his Behavioral Health Therapist to document fully the nature of the program that he attends. *See* Ex. B. The letter reflects that the individual entered the outpatient treatment program on January 20, 2003. According to the letter, the individual attends the program three nights a week from 6:00 p.m. to 9:15 p.m. and is expected to do so for six weeks. In addition, the program expects the individual to attend three weekly 12-step meetings and secure a sponsor prior to discharge. After he completes the six week program, the individual will then enter an Aftercare Program which requires him to attend a one and one-half hour session once a week for thirty weeks. In the letter, the Behavioral Health Therapist states that the individual “appears motivated to complete all phases of treatment. He has been attending AA meetings and is actively looking for a sponsor. He has been willing to discuss how his drinking has affected his life, family, and his career.” *Id.*

At the hearing, the individual elicited testimonial evidence that I considered in his favor. First, the individual’s wife convinced me at the hearing that she will not only be supportive of the individual’s efforts at sobriety, but will be instrumental in helping him eventually achieve sobriety. The fact that the individual’s wife is attending one or two evenings of therapy in connection with her husband’s intensive outpatient treatment program is a testament to her commitment to her husband. The solid support network that the individual’s wife will provide to her husband during his recovery phase is very important. Second, the DOE consultant-psychiatrist testified that the individual has Type I alcoholism, i.e., the disease is marked by a late age onset. Tr. t 68. <sup>9/</sup> According to the DOE consultant-psychiatrist, those with Type I alcoholism have a better prognosis for recovery than those

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<sup>9/</sup> In contrast, those with Type II Alcoholism develop the disease at an early age. *Id.*

with Type II alcoholism *Id.* 10/ Third, I considered that one week prior to the hearing the individual's brother-in-law died. The fact that the stress associated with that death apparently did not affect the individual's sobriety demonstrates to me that the individual has begun to internalize the alcohol treatment that he is receiving and has the willpower to remain abstinent.

Despite these positive factors, however, it is simply too soon for me to find that the individual is either rehabilitated or reformed from his alcohol dependence and habitual use of alcohol to excess. It is clear from the record that the individual is only in the early stages of his rehabilitation and reformation efforts. As of the date of the hearing, the individual had been sober for only five months and had been in treatment for only three weeks. Moreover, as of the hearing date, the individual had not decided which AA location he would attend regularly and had not chosen an AA sponsor. Further, the letter submitted by the individual to document his treatment progress confirms that the individual has only just embarked on his road to recovery. In the end, it is my common sense determination that not enough time has elapsed for me to find that the individual is rehabilitated or reformed from his alcohol dependence and his habitual, excessive consumption of alcohol.

Similarly, I find that the individual cannot be considered rehabilitated or reformed from his lying under Criterion F until he is rehabilitated or reformed from his alcohol dependence and habitual use of alcohol to excess. Until he resolves his alcohol-related illness and excessive, habitual use of alcohol, I remain uncertain what other liberties he might take with the truth in the future.

As for the DWI arrest, the elevated BAC levels, and the other matters that form the bases of the Criterion L concerns, I also find that until the individual is rehabilitated or reformed from his alcohol dependence and other alcohol-related problems, it is likely that incidents such as those that triggered the Criterion L concern will recur in the future

#### **b. Job Performance**

The individual's manager testified that he has supervised the individual for one year. Tr. at 41. According to the manager, the individual has produced only the highest quality work during that period. The manager also reviewed the individual's personnel records for the period before he became the individual's manager and spoke to others who previously supervised the individual to ascertain whether there had been any work-related problems with the individual. The manager found "nothing but praise" for the individual. *Id.* The manager further opined that the individual is not a risk to national security but the "loss of his services would negatively impact national security." *Id.* at 42.

In addition, the manager testified that he never had reason to suspect that the individual had a problem with alcohol. *Id.* at 48. The manager disclosed at the hearing that a close family member had undergone intensive alcohol treatment. As part of the treatment, the manager testified that he underwent intensive training on how to live with an alcoholic, how to recognize the symptoms of

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10/ While the DOE consultant-psychiatrist conceded at the hearing that persons with Type I alcoholism fare better than those with Type II alcoholism, he nonetheless reiterated that the individual needs two years of sobriety to achieve rehabilitation or reformation in view of the severity of his alcoholism.

the disease, and understand that alcoholism is a progressive disease. He testified further that he stopped consuming alcohol himself after that experience as he recognized in himself some danger signs. *Id.* at 40.

Based on this testimony, it appears that the individual's alcohol consumption has not, to date, affected his ability to perform his job responsibilities. What is remarkable given the facts of this case is that the individual was able to function so well at a professional level while consuming substantial quantities of alcohol at home in the evenings.

As other Hearing Officers have previously stated, sobriety and reliability on the job do not overcome the security concerns. Personnel Security Hearing (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996). Excessive consumption of alcohol off the job raises security concerns because of the possibility that a clearance holder may say or do something under the influence of alcohol that compromises national security. See Personnel Security Hearing, (Case No. VSO-0106), 26 DOE ¶ 82,767, aff'd, Personnel Security Review, 26 DOE ¶ 83,009 (1997) (affirmed by OSA, 1997), and cases cited therein. The fact that this has apparently not occurred in the past is no guarantee that it will not occur in the future. For this reason, I cannot find that the individual's work record alone resolves the alcohol-related concerns advanced by the DOE.

As for the manager's opinion that the loss of the individual's services will negatively impact national security, I am not able to consider his viewpoint in rendering my decision regarding the individual's access authorization. The Part 710 regulations state, in relevant part, that "[p]ossible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer." 10 C.F.R. § 710.27(b).

### **c. Other Factors**

The record demonstrates conclusively that the individual began habitually using alcohol to excess more than six year ago. Testimony of the DOE consultant-psychiatrist indicates that the individual was getting legally intoxicated every night that he was drinking. The individual's health suffered as the result of his alcohol consumption yet he continually refused to heed the advice of his physician to seek alcohol counseling. Alcohol caused the individual's liver enzymes to elevate ten times the normal limit and his liver to become diseased. Yet, the individual continued to drink despite these serious medical consequences. The individual also continued to consume alcohol even while taking prescription medications designed, in one instance, to ease alcohol withdrawal symptoms and, in the second instance, to induce vomiting and nausea if taken with alcohol. Not even getting arrested for DWI and failing to realize that he had been involved in an automobile accident while intoxicated caused the individual to stop drinking. All these factors enumerated above lead me to conclude that the individual's habitual excessive consumption of alcohol is pervasive, extensive and serious for purposes of 10 C.F.R. § 710.7(c).

With regard to the individual's misrepresentations, I considered that they occurred fairly recently. As previously noted in Section IV.1.C., I determined that the falsifications were significant because they pertained to relevant and material information under scrutiny by the DOE. While it is possible that the individual lied because he was in denial about the extent of his alcohol problem, I cannot

consider self-denial as a mitigating factor in this case. Only rehabilitation or reformation from his alcohol-related issues can address any self-denial that might have caused the individual to lie deliberately to the DOE.

## **V. Conclusion**

As explained in this Decision, I find that the DOE properly invoked 10 C.F.R. § 710.8 (j), (h), (f) and (l) in suspending the individual's access authorization. After considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, I find that the individual has failed to mitigate the security concerns associated with his alcohol dependence, his habitual use of alcohol to excess, his falsifications, his alcohol-related arrest, and the circumstances surrounding that arrest. Therefore, I conclude that the individual has not yet demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: April 23, 2003