* 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 XXXXXX's.

November 12, 2003

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 15, 2003

Case Number: TSO-0051

This Decision concerns the eligibility of XXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office suspended the individual's clearance after determining that information in its possession created substantial doubt about the individual's continued eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should not be restored at this time.

Background

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The local DOE security office issued a Notification Letter to the individual on April 3, 2003. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a clearance, based upon disqualifying criteria set forth in section 710.8, paragraphs (h) and (l).

The Notification Letter refers to a written evaluation by a DOE consultant psychiatrist issued on October 25, 2002, which found that the individual has a diagnosable mental condition according to 10 CFR § 710.8(h), "depression, which at times has caused, and certainly may in the future cause significant defects in judgment." According to the DOE psychiatrist's evaluation, the medical treatment the individual was receiving at the time "is probably not appropriate for the condition as described and, therefore, not adequate to resolve concerns." The evaluation recommended that the individual seek medical attention to get appropriate medication and psychotherapy.

The Notification Letter also states that under 10 CFR § 710.8(l), the individual 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 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. These concerns are based on the individual's arrest in December 2001 for domestic battery after pushing his wife during an argument, and his statements during a Personnel Security Interview (PSI) held on April 17, 2002 that he has considered suicide.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns 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 Hearing Officer in this case. At the hearing I convened, the DOE Counsel called three witnesses: a personnel security specialist, the DOE psychiatrist, and the individual's wife. The individual, who represented himself, testified on his own behalf, and called three other witnesses: his own psychologist, an employee assistance program counselor at the DOE facility, his adult child, and his wife. The DOE submitted six written exhibits. The individual submitted two written exhibits, including an evaluation by his psychologist.

Standard of Review

The applicable DOE regulations state that "[t] he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 CFR § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in section 710.7(c):

> the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include participation; the frequency and recency of the conduct; the age and maturity of the individual at the time the voluntariness of participation; the absence or presence of rehabilitation or reformation and other perti changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the l continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 CFR Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 CFR § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." S*ee, e.g., Personnel Security Hearing,* Case No. VSO-0013, 24 DOE

¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 CFR § 710.7(a). For the reasons discussed below, it is my opinion that the individual has not resolved the concerns in the Notification Letter, and therefore his access authorization should not be restored at this time.

Findings of Fact

The facts are not in dispute. The individual reported his arrest for Domestic Battery in December 2001, after shoving his spouse during an argument. In the April 2002 PSI, the individual admitted that he had considered suicide and placed a loaded gun to his head on two occasions when he was feeling depressed. The local security office referred the individual to the DOE psychiatrist, who interviewed the individual in September 2002. The DOE psychiatrist also reviewed the results of the individual's psychological test results, the April 2002 PSI transcript, and "other bits of collateral data." Psychiatric Evaluation (DOE Exhibit 5) at 1. His evaluation concluded that the individual suffered from a mental condition, "depression, which at times has caused and certainly may in the future cause significant defects in judgment given his suicidality." DOE Exhibit 5 at 6.

Testimony of the Witnesses at the Hearing

The Personnel Security Specialist

The DOE personnel security specialist explained that the DOE psychiatrist's evaluation of the individual's mental condition raised security concerns about his judgment and reliability. Hearing Transcript (hereinafter cited as "*Tr.*") at 10-12. She also stated that the individual's arrest for domestic battery raised concerns that he might be vulnerable to pressure or coercion because he had failed to tell his clergyman about the arrest, and he might want to hide that information from the public. *Id.* at 13, 138-139. Finally, she indicated that the individual's self-reported history of suicidal gestures raised additional concerns about his reliability in protecting classified information or materials.

The DOE Psychiatrist

The DOE psychiatrist's evaluation noted that the individual had been treated by his primary care physician for depression and suicidality for more than a decade, but had never been treated by a psychiatrist. DOE Exhibit 5 at 2. The DOE psychiatrist diagnosed the individual as currently suffering from Dysthymia, which is a milder form of Depression, and depressive personality disorder. *Tr.* at 23-28. He was also concerned that the individual may have some form of Bipolar Disorder, and that his current antidepressant medications were not adequate to control this disorder, and could even make it worse. *Id.* at 26-27. In addition to getting the proper medications including a mood stabilizer, the DOE psychiatrist thought the individual should have cognitive behavioral psychotherapy to help him deal with his low self-esteem and the conflict in his marriage. *Id.* at 32-33. The DOE psychiatrist concluded his direct testimony with a

prognosis. He testified that he had reviewed the treatment report submitted by the individual's psychologist (discussed below), and that the medication and psychotherapy the individual is now getting appear well-suited to his condition, although there was neither a formal evaluation nor any progress notes from the private psychiatrist who was treating the individual. According to the DOE psychiatrist, with the proper regimen of medication and psychotherapy, he expected the individual's mental condition could be significantly improved "in something like six to twelve months." *Id.* at 35-38. The DOE psychiatrist cautioned that because he believes the individual does have a form of bipolar disorder, which is recurrent even with treatment, there would always be some concern about the individual's judgment and reliability. However, the DOE psychiatrist opined that the individual was intelligent and responsible, and if he stayed in treatment, he would "probably not" have any problems being able to safeguard classified information. *Id.* at 40.

The Individual's Psychologist

The individual's psychologist testified that he recently began psychotherapy sessions with the individual, working in conjunction with the individual's psychiatrist. *Id.* at 44. (The individual's psychiatrist referred the individual to the psychologist in part because he did not want to testify at the hearing.) The individual's psychiatrist is managing the individual's medication "in a structured way" to determine the specific drugs and dosage that are most effective. According to the psychologist, neither he nor the individual's psychiatrist sees the individual as suffering from a bipolar condition, per se, but both agree with the DOE psychiatrist that the individual shows "dysthymia, personality disorder characteristics, and a history of recurrent depression." *Id.* at 45. The psychologist agreed with the DOE psychiatrist's assessment that the individual could expect progress in about six to twelve months, and cautioned "it could be longer than that" because "[the individual's] difficulties are quite chronic." *Id.* at 47. The psychologist also ventured a prognosis, stating that while he could never feel "100 percent confident or even necessarily 95 percent confident" that the individual would never again engage in domestic violence or suicidal gestures, if the individual continued treatment, he might come to a point when the risk would be fairly low. *Id.* at 49.

The Individual

The individual testified about the positive actions he has taken to improve his situation since being arrested in December 2001. He successfully completed a 52-week anger management course that was required by the court, and the charges against him were dropped. *Id.* at 54; DOE Exhibit 4 (reports from the anger management course). The individual stated that there had been no further instances of domestic violence since the pushing incident in December 2001, nearly two years before the hearing. *Tr.* at 77. At the request of his supervisor, the individual has also been going to an employee assistance program counselor, whose testimony is discussed below, to learn how to deal with stress and do his work more efficiently. *See* DOE Exhibit 6 (report from the counselor). After he received the Notification Letter and the DOE psychiatrist's evaluation, the individual began treatment with his own psychiatrist to get the proper

medication, and more recently, he began psychotherapy with his psychologist. The individual believes that the new medications prescribed by his psychiatrist are working well. He also believes that the psychotherapy is helpful, as well as the counseling. *Tr.* at 54-57.

According to the individual, he feels capable of safeguarding classified information and he believes that his judgment and reliability are not a problem. The individual does not believe he is vulnerable to blackmail. He testified that his family members who are important to him knew about the domestic violence arrest, and that he would report any attempt to coerce classified information from him to the counterintelligence office. *Id.* at 57-58. Under cross-examination by the DOE Counsel, the individual admitted that he and his wife argued about unfinished household projects he had undertaken. He stated that he was not a very religious person, but admitted that he had not told his clergyman about the domestic violence arrest because he was embarrassed. *Id.* at 64. The individual also indicated that he was willing to enter marriage counseling, as part of an overall approach to reducing conflict with his wife. *Id.* at 66-73.

The DOE psychiatrist and the individual's psychologist remained in the hearing room to observe the individual's testimony. The DOE psychiatrist acknowledged that the individual had taken a number of positive steps in the year since he had first seen the individual. But the DOE psychiatrist did not change his evaluation of the individual or his prognosis after listening to his testimony. *Id.* at 74-77. The individual's psychologist noted that he had only recently begun seeing the individual, and concurred that the individual's testimony "just reinforces the fact that we're in this for the long haul." *Id.* at 78. Both professionals agreed that the individual's treatment was appropriate, he was honest, and those factors improved his prognosis. *Id.* at 80.

The Individual's Wife

The individual's wife testified that she had seen him lose his temper from "frustration" at times during their long marriage, and that she recalled one argument in their car when he hit her on the shoulder. *Id.* at 89-94. She also admitted arguing with her husband about his failure to complete household projects. However, she had no recollection of the December 2001 pushing incident, because she was on pain medication for injuries sustained in an auto accident the preceding day. *Id.* at 95-97. Nor did the individual's wife recall his having made a suicidal gesture around the time of his arrest, although she observed, "He has said he would like to die. Many times he has said that." *Id.* at 105. She thought the medication the individual had been receiving from his family physician was supposed to help his mood, but never called his doctor when he made suicidal or depressed statements. *Id.* at 106. In the end, the individual's wife praised him for his honesty, a quality she thought was "hard to come by." *Id.* at 110.

The Individual's Daughter

The individual's adult daughter testified on his behalf at the hearing. She did not consider the individual a physically abusive parent. She indicated that he was sometimes

verbally abusive, though rarely. *Id.* at 113-114. She also thought her mother could get "in-your-face," and she reported having witnessed occasional arguments between her parents. The individual's daughter saw his getting counseling after the domestic violence arrest as a positive thing that had come out of that incident. *Id.* at 120.

The Employee Assistance Program Counselor

The counselor is a licensed clinical social worker who also holds a DOE security clearance. He explained that the individual's manager referred the individual to him a year ago for his low mood and taking too much time to complete work assignments. The counselor diagnosed the individual as having dysthymia, which he described as "a low-grade longstanding kind of depressive disorder." *Id.* at 124. They met about 20-25 times over the past year, and the counselor treated the individual with cognitive therapy. The counselor thought the individual had responded well, and showed "marked improvement" in "his ability to think clearly, to regulate his moods, to handle stressful situations in a much better light." *Id.* at 126. The counselor has not received any further complaints about the individual's work performance, and he thought the individual's improved coping skills were helping him avoid further domestic confrontations. He also noted that the individual seems to be responding positively to his new medications, appearing "more upbeat," smiling more. *Id.* at 127. The counselor thought the individual could safeguard classified information, that he did not have a significant defect in his judgment or reliability, and was eligible for a clearance. *Id.* at 128.

Analysis

A mental illness or condition that causes, or may cause, a defect in judgment or reliability is a security concern because the resulting defect in judgment or reliability could impair the individual's ability or willingness to follow security procedures and regulations. *Personnel Security Hearing*, Case Number VSO-0082, 25 DOE ¶ 82,800 (1996). In this case, the individual has suffered symptoms of depression, engaged in domestic violence, and made suicidal gestures. As explained by the personnel security specialist, the DOE psychiatrist's diagnosis of the individual's mental condition raised security concerns under Criterion H. In addition, the individual's suicidal gestures and domestic violence raised security concerns about his reliability, trustworthiness and vulnerability to coercion under Criterion L. I therefore find that DOE security was correct to suspend his clearance and send the case for administrative review.

There is agreement between the DOE psychiatrist and the individual's psychologist that he currently suffers from dysthymia and depressive personality disorder, and the DOE psychiatrist believes the individual may also have some kind of bipolar disorder. The record shows that after receiving the Notification Letter, the individual has taken the right steps to get appropriate medical and psychotherapeutic treatment for his condition. However, the DOE psychiatrist and the individual's psychologist agree that under the most optimistic scenario, at least six to twelve months of treatment with medication and psychotherapy (which the individual commenced shortly before the hearing) will be required before he could be expected to show substantial progress.

In addition to needing more time to assess the efficacy of his present treatment, the individual's psychologist and the DOE psychiatrist both commented on the chronic nature of the individual's mental condition, noting that he will probably have to remain on medication for the rest of his life, and that he will always have some risk of a relapse. Nevertheless, both professionals expressed a fairly high degree of confidence that if and when the individual's treatment does substantially improve his symptoms, he would not present an undue security risk, and could be counted on to exercise good judgment and protect classified information. Therefore, while I find that the individual has taken several steps in the right direction since the December 2001 incident, he has not yet mitigated the security concerns raised in the Notification Letter about his mental condition. *See Personnel Security Review*, Case No. VSA-0387, 28 DOE ¶ 83,022 (OHA 2001) (insufficient time had passed to establish track record of mental stability for individual who recently entered treatment).

Likewise, I find the individual has not mitigated all the concerns under Criterion L. With respect to the suicidal gestures and domestic violence, while they do form the basis for Criterion L concerns, it is clear that these are products of the individual's mental condition. When and if the individual's mental condition improves through medication and psychotherapeutic treatment, these concerns would be reduced or even mitigated. Nevertheless, those actions do raise concerns about his reliability and trustworthiness, and not enough time has elapsed since they occurred and the individual entered treatment to conclude that they have been mitigated. *See Personnel Security Hearing*, Case No. VSO-0115, 26 DOE ¶ 82,771 (1997) (factors listed under Criterion L inextricably connected with individual's mental disorder, and since security concerns under Criterion H were not yet resolved, security concerns under Criterion L were not resolved).

I reach a contrary conclusion about the individual's potential vulnerability to coercion, a concern that seemed to rely heavily on the fact he has not told his clergyman he engaged in domestic violence. The individual, according to his own characterization, belongs to a church but is not religious. Since he is not religious, it is understandable why he chose not to share this information with his church. The individual has told all of his significant family members about the domestic violence, and has made no attempt to hide it from others who should know about it. I believe the individual, whom his wife, the DOE psychiatrist, and the individual's psychologist each independently described as an honest person, would take the necessary action to resist any attempt to blackmail him into compromising classified information.

Conclusion

Based on the record in this proceeding, I find that the individual has not resolved the security concerns under 10 CFR § 710.8(h) and (l) that were specified in the Notification Letter. For the reasons explained in this Decision, I find the individual has failed to show that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's access authorization should not be restored at this time.

Thomas O. Mann
Hearing Officer
Office of Hearings and Appeals

Date: November 12, 2003