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February 18, 2004

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 19, 2003

Case Number: TSO-0052

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to maintain an access authorization under the Department of Energy's (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 local DOE Security Office suspended the individual's access authorization pursuant to the provisions of Part 710. 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 many years, the individual has been employed by a DOE contractor in a position that requires him to hold a security clearance. On several occasions during the individual's 19-year employment tenure, the DOE examined some potentially derogatory information in the individual's background that raised questions about his suitability to maintain a DOE security clearance.

The DOE conducted its first Personnel Security Interview with the individual in 1992 (PSI #1 or Exhibit 9) when it learned that the individual had allegedly assaulted his wife and had not reported an outstanding arrest warrant for that incident. The DOE discussed with the individual the circumstances leading to the purported battery on his wife, as well as other information about an alleged assault by him on his brother-in-law.

Nine years later, the DOE conducted a second Personnel Security Interview with the individual (PSI #2 or Exhibit 8) after the individual reported his arrest on February 14, 2001 for "Drinking While Under the Influence" of alcohol (DWI). Shortly after PSI #2, a DOE consultant-psychiatrist examined the individual and found that the individual did not present with a mental illness or substance abuse that would cause a significant defect in his judgment and reliability. *See* Exhibit (Ex.) 13 at 5. The DOE consultant-psychiatrist opined at the time that the individual had used poor judgment on one occasion only.

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.

In June 2001, the DOE conducted a third Personnel Security Interview with the individual (PSI #3 or Exhibit 7) to discuss financial matters not germane to this Decision. During PSI #3, however, the individual provided documentation regarding the disposition of his February 2001 DWI arrest and a Probation Order indicating that he would remain on probation for 36 months and be required to attend 30 hours of a Level I Drinking Drivers Program. Ex. 18. In addition, the individual informed the Personnel Security Specialist who conducted PSI #3 that he did not intend to drink and drive in the future. Transcript of Hearing (Tr.) at 65.

In June 2002, the DOE conducted its fourth Personnel Security Interview with the individual (PSI #4 or Exhibit 6). PSI #4 followed a report that the individual had been arrested on June 1, 2002 for inflicting corporal injury on his girlfriend after he had consumed excessive amounts of alcohol. During PSI #4, the DOE inquired about the circumstances that led to the individual's June 2002 arrest, and questioned the individual about omissions in a number of security documents that he had completed over the years. A few months after PSI #4, the same DOE consultant-psychiatrist who had examined the individual in 2001 re-examined the individual. This time the DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse and intermittent explosive disorder (provisional). According to the DOE consultant-psychiatrist, these two mental conditions have caused the individual to exhibit significant defects in his judgment and reliability in the past.

Subsequently, the DOE suspended the individual's security clearance and sent a Notification Letter to the individual advising that the DOE possessed reliable information that created a substantial doubt pertaining to his eligibility to maintain his security clearance. The DOE also advised that the derogatory information it possessed fell within the purview of four potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f), (j), (h) and (l) (Criterion F, J, H and L respectively).²

Upon his receipt of the Notification Letter, the individual exercised his rights under the Part 710 regulations and requested an administrative review hearing. On May 20, 2003, the Director of the Office of Hearings and Appeals appointed me the Hearing Officer in this case. After receiving an extension of time to accommodate the parties' schedules, I conducted a hearing in

²Criterion F pertains to information that a person has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or 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 § 710.31." 10 C.F.R. § 710.8(f). Criterion H concerns 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 and 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 L relates, in part, to 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, among other things, criminal behavior. 10 C.F.R. § 710.8 (l).

this matter. 10 C.F.R. § 710.25(g). At the hearing, 14 witnesses testified, two on behalf of the DOE and 12 on behalf of the individual. In addition to the testimonial evidence, the DOE tendered 31 exhibits into the record, and the individual submitted 17 exhibits.

II. Regulatory Standard

A. 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 on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting 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).

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 is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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 evidence, 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. The Notification Letter

As previously noted, the DOE cites four potentially disqualifying criteria as bases for suspending the individual's clearance, *i.e.*, Criteria F, H, J and L.

With regard to Criterion F, the DOE alleges that on June 17, 1993, the individual was in a fight with another person. According to the Notification Letter, the individual was charged with battery and disturbing the peace in connection with this incident. The Notification Letter states that both of these charges were later dismissed. The DOE alleges that the individual failed to list

the charges stemming from the June 17, 1993 incident on eight security forms, one in 1993, two in 1994, two in 1996, one in 1998 and one in 1999. The DOE also alleges that on March 20, 1988, the individual struck his wife in the face and arms. According to the DOE, while the individual was taken into custody and detained, he was not arrested. The local district attorney authorized a complaint against the individual for misdemeanor battery, but the charge was dismissed on August 10, 1992. The DOE claims that the individual failed to list the charge relating to the March 1988 incident on two security forms, one in 1991 and the other in 1993.

As for Criterion H, the DOE relies on the opinion of a DOE consultant-psychiatrist that the individual suffers from a mental condition or illness, *i.e.*, intermittent explosive disorder (provisional), that causes, or may cause, a significant defect in his judgment or reliability.

To justify Criterion J as one of the bases for suspending the individual's security clearance, the DOE relates the following information. First, a DOE consultant-psychiatrist examined the individual and opined that the individual suffers from alcohol abuse. Second, on February 14, 2001 (February 2001 Incident) the individual was arrested for driving while under the influence of alcohol. During the February 2001 Incident the individual allegedly vandalized his own vehicle and engaged in inappropriate behavior with a police officer. The individual ultimately pled guilty to the lesser-included charge of reckless driving (alcohol related) in relation to the February 2001 Incident. Finally, on June 1, 2002 (June 2002 Incident) the individual engaged in violent behavior while under the influence of alcohol.

To support its Criterion L concerns, the DOE cites the individual's arrest in June 2002 for infliction of corporal injury on a spouse/cohabitant and the totality of the circumstances leading up to that arrest.

IV. Findings of Fact

In March 1988, the individual's wife called police alleging that the individual had hit her in the face with his open hand and fist. See Ex. 15. When the police arrived, they found the individual's wife with a swollen, discolored eye. *Id.* The police report indicates that the individual fled the home and was later apprehended by police. *Id.* Even though the individual's wife elected not to file a complaint against her husband, the local district attorney authorized a complaint against the individual for misdemeanor battery.

On March 22, 1991, the individual executed a Questionnaire for Sensitive Positions (QSP) in which he responded negatively to the question posed whether he had ever been arrested, charged, or convicted of any type of offense. Ex. 26. The individual testified at the hearing that he did not know that there were any charges connected with the 1988 incident, or that there was an outstanding arrest warrant for him. *Id.* at 151.

According to the record, at some point before the individual completed his next QSP in 1993, the DOE told him that there was a warrant out for his arrest in connection with the incident with his wife in 1988. Tr. at 131, 151. After learning about the outstanding warrant, the individual went to the courthouse and discovered that the charges against him had been dismissed on August 10, 1992. *Id.* at 157-158. On the QSP that he executed on May 21, 1993, the individual answered affirmatively the question about any prior arrests and charges that had occurred within the past

five years. Ex. 26. He also clearly stated on the QSP that the charge related to the 1988 incident had been dismissed on August 10, 1992. *Id.* Over the next seven years, the individual disclosed this same information to the DOE on eight occasions.

On June 17, 1993, the individual's 13-year old stepson and a neighbor's son were involved in a fight. Tr. at 159. The individual claims that his neighbor and his neighbor's wife choked his son and tried to hit his son with a beer bottle. *Id.* The individual testified that he immediately called the police to report his neighbor's actions. According to the individual, the police questioned the neighbor and then left. Within an hour, the police were called back to the scene after the individual and his neighbor became embroiled in a physical altercation. *Id.* Sometime later, the individual was summoned to appear in court on charges of battery and disturbing the peace. Tr. at 139; Ex. 6 at 31. The individual retained an attorney who allegedly told the individual that the arrest would not be on his record. Tr. at 165. While there are no documents in the record regarding the disposition of the charges, the individual told the DOE that the battery charge was dismissed and that he pled nolo contendere to the charge of disturbing the peace. Ex. 5 at 31; Tr. at 139, 161-162. The individual failed to list the charges stemming from the 1993 altercation with his neighbor on eight security forms over a six-year period. Ex. 26.

On February 14, 2001, the individual finished working at 6:45 a.m. Ex. 8 at 8. He ran some errands, returned home and consumed one or two gin and tonics on an empty stomach. *Id.*, Ex. 7 at 50, Tr. at 167. Soon thereafter, his girlfriend arrived at his home and he decided to drive her to do another errand. Ex.8 at 8. Enroute to their destination, the individual and his girlfriend started arguing. *Id.* at 9. According to the girlfriend's testimony, she asked the individual to take her home. Tr. at 213. In response, the individual told his girlfriend to walk the four miles home. *Id.* The individual stopped the car and tried to open the passenger side door. When he could not open the door, the individual started pushing and kicking the car, causing the passenger side window to shatter. *Id.* At some point, the girlfriend entered an establishment to use the restroom. Tr. at 214. A concerned citizen called the police because he suspected that the woman had been a victim of domestic violence based on her appearance. Ex. 16 (police report). Upon arriving at the scene, a policeman observed that the individual had red, watery eyes, slurred speech and an odor of alcoholic beverages on his breath. *Id.* The officer asked to see the individual's license. The individual complied, but grabbed the license from the officer's hands. According to the police report, the individual acted in an angry, belligerent manner at the scene. When the individual indicated that he was leaving, the officer elected not to detain the individual without additional police assistance. *Id.* After the individual drove away, the officer followed the individual's car until several other police cars arrived. At some point, the individual pulled his car to the side of the road and emerged from the vehicle. After he refused orders from the police to return to his car, the officers drew their weapons. Subsequently, the individual was arrested and transported to the hospital for a blood test. Ex. 7 at 47. After a four-hour delay at the hospital, the individual's blood was drawn. His blood alcohol level registered .08. *Id.* at 48. In May 2001, the individual pled guilty to reckless driving (alcohol related). He was placed on 36 months probation and ordered to attend 30 hours of a Level I Drinking Drivers Program. Ex. 7 at 16; Ex. 18.

On May 31, 2002, the individual and his girlfriend went to a sports bar and consumed an unknown number of beers. Tr. at 220. They returned to the individual's house and by midnight had consumed 24 beers between the two of them. Ex. 6 at 17. Sometime after midnight the two

began to argue. Tr. at 223-224. According to the girlfriend, the individual flipped over the couch on which she was sitting. Tr. at 224. When the girlfriend moved to a second couch, the individual flipped that couch over. *Id.* This time the girlfriend hit her head on a lamp and end table. *Id.*, Ex. 20. The individual then grabbed the girlfriend by her hair and dragged her around the room. Ex. 20. The individual's girlfriend called the police and the police arrested the individual for inflicting corporal injury on a spouse/cohabitant. Ex. 21. On October 11, 2002, the individual pled nolo contendere to the charges. He was placed on 36 months probation, ordered to attend alcohol abuse and domestic violence counseling sessions, and required to perform 40 hours of community service.

V. Analysis

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).³ 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.

A. The Security Concerns At Issue

The individual's behavior for over a decade in allegedly providing false information to the DOE, drinking excessively or abusively, engaging in criminal or violent conduct, and failing to control his anger provides ample reason to question his continued suitability to hold a DOE security clearance.

From a security standpoint, false statements made 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. TSO-0024), <http://www.oha.doe.gov/cases/security/tso0024.pdf>; *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 82,823 (1999) *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000). In addition, a person's deliberate falsification raises a security concern that he or she might be susceptible to coercion, pressure, exploitation, or duress arising from the fear that others might learn of the information being concealed. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

³Those factors 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.

The individual's use of alcohol during the incidents that occurred in 2001 and 2002 and his behavior in connection with the incidents that occurred in 1988, 1993, 2001 and 2002 raise a question about the individual's mental health. It is the opinion of a DOE consultant-psychiatrist that the individual suffers from intermittent explosive disorder (provisional) and alcohol abuse. These illnesses or conditions, according to the DOE consultant-psychiatrist cause, or may cause, a significant defect in judgment and reliability. Mental illnesses or conditions are security concerns because they raise questions about a person's judgment, reliability, and stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710.

Excessive consumption of alcohol itself is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and failure to control impulses, and increases the risk that classified information may be unwittingly divulged. In the case at hand, the record is clear that the individual's excessive alcohol use in 2001 and 2002 caused him to engage in inappropriate behavior with a police officer, engage in domestic violence towards his girlfriend, and vandalize his own vehicle.

Finally, the individual's violent behavior alone, as manifested by his actions in June 2002, provides another basis for the DOE to question the individual's judgment and reliability from a security context.

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), 26 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). In this case, the individual has raised several arguments and provided documentary and testimonial evidence in an attempt to mitigate the DOE's security concerns.

B. Mitigating Evidence

1. Falsification

a. Omission of 1988 battery charge

With regard to the individual's failure on two occasions to report the misdemeanor battery charge connected with the 1988 incident involving his wife, I find that the security concerns associated with the falsification at issue have been mitigated.

While it is true that the individual failed to list the 1988 charge on his 1991 QSP, he testified convincingly that he was unaware that there were any charges connected with that incident. For this reason, I find that he did not deliberately falsify his 1991 QSP. Even assuming *arguendo* that the individual had deliberately falsified his 1991 QSP, I find that the individual took positive steps to allay the DOE concerns. Specifically, once the DOE told him in 1993 that there was an outstanding warrant for his arrest in connection with the 1988 incident, the individual immediately went to the courthouse to inquire about the matter. There he learned that the charges associated with the 1988 incident had been dismissed in 1992. Soon thereafter, the

individual completed a QSP in which he disclosed the 1988 charge. Between 1993 and 1999, the individual disclosed the 1988 incident on eight DOE security forms. It has been 11 years since the individual corrected the record and provided accurate information regarding this matter. I find that this passage of time, coupled with the individual's correction of the record, mitigate the security concerns with regard to the omission on his 1991 QSP.

As for the individual's alleged omission of the 1988 battery charge on the 1993 security form, I find that individual revealed the 1988 charge in question and its subsequent dismissal to the DOE on his 1993 QSP. Accordingly, I find with regard to the 1988 battery charge that the individual did not deliberately falsify his 1993 QSP as alleged in the Notification Letter.

b. Omission of 1993 battery and disturbing the peace charges

With regard to the individual's failure to disclose the 1993 charges on eight security forms filed between 1993 and 1999, I was not convinced by the individual's testimony that he had omitted the charge in question on those eight forms because he did not believe that he had been charged with any offense in connection with the 1993 incident.

At the hearing, the individual testified that his "understanding of being charged with something is actually going to jail, being booked, given a citation saying you are charged with that incident. . . ." Tr. at 163. He also claimed that he was never told that he was charged with anything. *Id.* at 163-164.

There are several reasons why I find the individual's arguments to be unavailing. First, the individual admitted during the 2002 PSI that he had been charged with battery and disturbing the peace in connection with the incident in question. Ex. 6 at 31.⁴ Second, the individual admitted that he received a summons to appear in court and retained an attorney to present a claim of self-defense in court with regard to the incident in question. *Id.* at 165. Third, the individual revealed at the hearing that he had discussed with his attorney his employment-related concerns about

⁴ When the individual's counsel asked the individual at the hearing to reconcile his statements to the DOE during a PSI in 2002 with his testimony at the hearing, the individual claimed that he only admitted at the PSI that he had been charged in 1993 because that "is what they wanted me to say." Tr. at 164. I have reviewed the transcript of PSI #4 and find that it is devoid of anything suggesting the Personnel Security Specialist coerced, tricked or misled the individual into admitting the matter in question. The precise exchange that occurred between the Personnel Security Specialist (PSS) and the individual is as follows:

PSS: You were charged with battery and disturbing the peace.

Individual: Yes.

PSS: And you were ordered to appear in court.

Individual: Yes.

PSS: On August 5, 1993 you pled nolo contendere to disturbing the peace and the battery charge was dismissed.

Individual: Yes.

PSS: And then on January 28, 1994 the disturbing the peace charge was dismissed.

Individual: Yes.

PSS: Do you agree with all this?

Individual: Yes.

having the 1993 incident appear on his record. *Id.* at 166. According to the individual, his attorney told him that he would make sure that “they were not on my record because they were dismissed.” *Id.*⁵ In the end, I find that the individual’s statements and actions belie those of someone who did not believe that he had been charged with an offense.

Cases involving verified falsifications are 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 falsification 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* (Case No. VSA-0327), 28 DOE ¶ 83,005 (2000) (affirmed by OSA, 2000); *Personnel Security Hearing* (Case No. VSO-0418), 28 DOE ¶ 82,795 at 85,705 (2001), *aff’d*, *Personnel Security Review* (Case No. VSA-0418), 28 DOE ¶ 83,024 (2001) (affirmed by OSA, 2001).

As a starting point of analysis, I find that the individual’s falsifications are serious matters. Lying on eight forms that supply information on which a security clearance is continued subverts the integrity of the access authorization process.

With regard to the facts surrounding the falsification, I find for the reasons discussed above that the individual deliberately concealed information from the DOE for a period of nine years, from 1993 to 2002. The individual’s revelation at the hearing that he was concerned about the impact the 1993 incident would have on his job suggests to me that he concealed the information on the basis of self-interest. Moreover, the falsifications at issue cannot be characterized as isolated since the individual lied about the 1993 incident under penalty of perjury eight times. In addition, it is relevant that the individual did not voluntarily disclose this information before being confronted with it by the Personnel Security Specialist in PSI #4. *See Ex. 6*. Finally, I cannot ascribe the individual’s falsifications to immaturity because he was a mature person at the time that he executed each of the eight security forms in question.

In evaluating whether the individual has comported himself in an honest, responsible, trustworthy manner since admitting the falsification in question in 2002, I gave considerable weight to the testimony of the Personnel Security Specialist who painstakingly outlined her reasons for questioning the individual’s credibility. Tr. at 114-118. The Personnel Security Specialist cited numerous instances of what she considered to be discrepancies between what the individual told her in PSI #4 and what is reflected in contemporaneous documents such as police reports. She also enumerated discrepancies between what the individual told her in PSI #4 and what he told the DOE consultant-psychiatrist in 2001 and 2002. She further highlighted instances where the individual was less than forthcoming with her about some of the derogatory information at issue in this proceeding. Lastly, she opined that the individual was evasive during PSI #4. By way of example, she testified that when she asked the individual how often he drinks

⁵ The individual did not testify that he had relied on advice from counsel when he failed to disclose the 1993 charge on his one security form in 1993, two security forms in 1994, two security forms in 1996, one security form in 1997, one security form in 1998 and one security form in 1999. Even had the individual testified to this effect, I would have required some sort of corroboration for the individual’s claim.

hard liquor, he replied, “hardly.” When she queried what “hardly” means, the individual responded, “I would not know what ‘hardly’ means.” *Id.* at 114.

There is other evidence in the record that leads me to question the individual’s candor in his dealings with the DOE. For example, the individual told the Personnel Security Specialist during PSI #3 in 2001 that he would not drink and drive in the future. Ex. 7 at 65. At the hearing, the individual admitted that in 2002 he consumed alcohol to the point of intoxication and drove his vehicle. Tr. at 296. Regarding the 1988 incident with his wife, the individual testified at the hearing that he did not hit his wife on the day in question in 1988. *Id.* at 182. When confronted at the hearing with the police report documenting the police’s observation that the individual’s wife had a swollen eye on the day the 1988 incident occurred (Exhibit 15), the individual still maintained that he had not hit his wife “at that time.” *Id.* at 182. Pressed further, the DOE Counsel asked the individual if his wife had lied to the police about the matter in 1988. *Id.* at 183. The individual responded “yes. . . . I believe so.” *Id.* The individual’s hearing testimony is inconsistent with statements that he made to the DOE during PSI #1 in 1992. During PSI #1, the Personnel Security Specialist asked the individual if he struck his wife in 1988 around the time that the police were called to his house. Ex. 9 at 17. He responded, “yes.” *Id.* at 18.

In the end, I must make a judgment as to whether the individual’s behavior during the 20 months that have elapsed between the time he admitted his falsification in 2002 and now are sufficient to demonstrate a pattern of responsible, honest behavior that abates the security concerns associated with the individual’s irresponsible action. Because I have lingering doubts about the individual’s honesty at the hearing and at the 2002 PSI, I am not convinced that he has comported himself in an honest manner since 2002. Furthermore, the individual concealed his falsehood from the DOE for six years. In this case, I find that 20 months is insufficient time to overcome the security concerns associated with the falsifications at issue. *See Personnel Security Hearing*, 27 ¶ 82,823 (1999), *aff’d*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000) (19 months not sufficient time to mitigate falsifications on security forms). In summary, I find that the individual has failed to mitigate all of the DOE’s security concerns regarding the falsifications associated with the 1993 incident.

2. Mental Health Concerns and Alcohol Issues

a. Intermittent Explosive Disorder (Provisional)

To contest the allegation that he suffers from Intermittent Explosive Disorder (provisional), the individual presented the testimony of a clinical psychologist who holds a Ph.D. in Clinical Psychology. The Clinical Psychologist has treated the individual in 10 psychotherapy sessions between July 2002 and October 2003. Tr. at 15, Ex. I.

The Clinical Psychologist disagrees with the DOE consultant psychiatrist’s opinion that the individual suffers from Intermittent Explosive Disorder (Provisional). It is the opinion of the Clinical Psychologist that the individual does not meet the diagnostic criteria for that mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). Tr. at 17. Specifically, the Clinical Psychologist testified that the diagnosis in question requires there to be several discrete episodes of failure to resist aggressive impulses that result in serious assaultive acts or destruction of property. She also pointed out

that the degree of aggressiveness expressed during an episode must be grossly out of proportion to any provocation or precipitating psychosocial stressor. *Id.* at 18. In addition, the Clinical Psychologist stated that the DSM-IV-TR requires that the aggressive episodes not be better accounted for by another mental disorder or not be due to the direct physiological effects of a substance. *Id.*

The Clinical Psychologist readily admits that there have been several instances where the individual has engaged in aggressive or assaultive behavior towards his girlfriend and others. It is the Clinical Psychologist's opinion, however, that these episodes cannot cumulatively be characterized as indicia of an Intermittent Explosive Disorder. With regard to the incidents that occurred in 2001 and 2002 with the individual's girlfriend, the Clinical Psychologist believes that those incidents can be better accounted for as the direct physiological effects of alcohol. *Tr.* at 17. As for the other incidents, the Clinical Psychologist believes that the individual's responses were not out of proportion to the precipitating psychological stressor. In one situation not at issue in this Decision, the individual broke up a fight. In the case involving the 1993 incident, the individual "was pushed by a neighbor." *Id.* at 18. As for the 1988 incident involving the individual's wife, the Clinical Psychologist relied on the individual's statement that he did not "physically assault his wife." *Id.* at 27.

In contrast, the DOE consultant-psychiatrist who is board certified in psychiatry and neurology finds that the individual does suffer from an Intermittent Explosive Disorder (Provisional). In his report, the DOE consultant-psychiatrist stated that "Intermittent explosive disorders are discrete episodes of difficulty resisting aggressive impulses that result in serious assaultive acts or destruction of property per DSM-IV Criteria." *Ex.* 12 at 9. At the hearing, the DOE consultant-psychiatrist explained that he provided a provisional diagnosis only because he did not have sufficient data to make a conclusive diagnosis. After listening to the testimony of the Clinical Psychologist, the DOE consultant-psychiatrist remained firm in his provisional diagnosis. He stated that he "does not have data showing that the behavior is continuing. But I do not have enough data to say with certainty that such a diagnosis does not exist." *Id.* at 61.

After carefully evaluating the testimony of both experts, I find that the documentary and testimonial evidence provided by the Clinical Psychologist convinces me that the security concern predicated on the provisional diagnosis of intermittent explosive disorder has been mitigated. The record in this case shows that the individual was so inebriated on June 1, 2002 that he did not remember the details of the events that transpired the evening before. *Ex.* 6 at 17-20. The record shows that on the day that the 2001 incident occurred the individual had consumed between four and eight ounces of gin on an empty stomach. These facts support the Clinical Psychologist's opinion that the 2001 and 2002 incidents were due to the direct physiological effects of alcohol. It also appears from the record that the individual's aggressiveness in connection with the 1993 incident and another incident that occurred in 1984 were not grossly out of proportion to their precipitating psychosocial stressors (i.e., challenging a neighbor who had tried to choke his son and breaking up a physical fight between the individual's sister and her ex-husband). That leaves the 1988 incident with the individual's wife. While I have serious reservations about the individual's candor with regard to this incident, I find that even if he did assault his wife in 1988 that assault alone does not fall within the DSM-IV-TR language of "several discrete episodes . . ." *See* DSM-IV-TR at p. 667.

b. Alcohol Abuse and other Alcohol-Related Matters

The Clinical Psychologist also addressed the issue of the individual's alcohol abuse at the hearing and in a report that she issued in October 2003. In short, she believes that the individual's alcohol abuse is in full remission because the individual told her that it has been more than 12 months since he consumed alcohol. Tr. at 16, Ex. I at 3. The Clinical Psychologist testified that she believes that the individual's mindset has changed now as he has grown to appreciate that it is not in his best interest interpersonally or professionally to drink. Tr. at 34-35. She concluded her testimony by giving the individual a positive prognosis. When queried on cross-examination about her recommendation for treatment, the Clinical Psychologist responded as follows: "Whatever the standard is for the department. In terms of clinically, I am not sure." Tr. at 37.

The DOE consultant-psychiatrist opined in February 2003 that the individual must demonstrate the following to be considered in sustained remission: (1) he must abstain from alcohol for 12 months, (2) he must show changes in his lifestyle that translate into improvement in interpersonal relations, and social and occupational functioning, (3) he must show evidence of being actively engaged in a support group such as a 12-Step program and (4) he should be evaluated by his attending physician for possible maintenance on Antabuse. Ex. 11 at 2. At the hearing, the DOE consultant-psychiatrist testified that he would no longer recommend Antabuse if it is true that the individual has not consumed alcohol in more than 12 months. Tr. at 59. Furthermore, the DOE consultant-psychiatrist would consider the individual to be in full remission if he met the other three requirements set forth above. With regard to the risk of relapse, the DOE consultant-psychiatrist testified that "there is certainly a likelihood that this can happen, but if he persists with the track that he is on now, getting therapy, getting counseling for it, attending classes, and certainly addressing his alcohol problem, he is on the right track in minimizing any future relapse." *Id.* at 202.

In the administrative review process, the Hearing Officer has the responsibility for deciding whether an individual with alcohol problems has exhibited rehabilitation and reformation sufficient to overcome the DOE security concerns. *See* 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation from substance abuse, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1998); *Personnel Security Hearing* (Case No. VSO-0106), 26 DOE ¶ 82,767 (1997), *aff'd, Personnel Security Review*, 26 DOE ¶ 83,009 (1997) (affirmed by OSA, 1997).

In this case, the issue of whether the individual can be considered rehabilitated or reformed from his alcohol abuse is a close call. The individual maintains that he has not consumed alcohol since June 1, 2002. Tr. at 169-170. He testified that he enrolled in an Employee Assistance Program, has seen a Clinical Psychologist, and has attended Alcoholics Anonymous (AA) every week. *Id.* He also related that the domestic violence classes that he attends and his AA classes have made him realize the seriousness of his alcohol problem. *Id.* at 172. The individual testified that he has no alcohol in the house and that his girlfriend is supporting him at his efforts in

maintaining sobriety. *Id.* at 197. He added that his girlfriend has gone to one or two AA classes with him. *Id.*

The individual's girlfriend testified at the hearing that she has known the individual for six years mostly in the capacity of a friend. *Id.* at 207. She related that she sees or talks to the individual almost everyday. *Id.* at 225, 228. She testified that she has not seen the individual drink since June 2002. *Id.* at 225. She reports that he will decline alcohol if offered it at social events. *Id.* at 231. When asked if she has ever attended AA meetings with the individual, the girlfriend responded "no," adding that on one occasion she went into the AA class to give the individual a message from his daughter. *Id.* at 232.

One of the individual's co-workers testified that he socializes with the individual once every two months. *Id.* at 237. The co-worker testified that he saw the individual at a comedy club one month before the hearing, and that the individual was not drinking at that time. *Id.* at 235. A supervisor testified that he last saw the individual consume alcohol eight or nine months prior to the hearing at a Super Bowl party. *Id.* at 285. The individual responded that the supervisor is mistaken with regard to his dates. The individual contends that the supervisor was thinking of the Super Bowl that took place in 2002, not 2003. ⁶ The individual's sister testified that the individual stopped drinking after the 2001 incident. *Id.* at 104. She believed that he stopped consuming alcohol because she and her mother talked to the individual and the individual realized the severity of the 2001 incident and its ramifications to his job. *Id.* at 105.

In evaluating the evidence with regard to rehabilitation in this case, I am troubled by the following matters. First, the individual testified untruthfully at the hearing that his girlfriend had attended one or two AA meetings with him. His girlfriend testified credibly that she had never attended any AA meetings with the individual but had gone into one of the meetings to give him a message from his daughter. This misrepresentation causes me to question what other parts of the individual's testimony may be embellished or untrue. Second, the supervisor testified that he last saw the individual drink alcohol in January 2003. While it is possible that the individual's own witness is mistaken, the supervisor's testimony, like that of the girlfriend recounted above, causes me question the individual's candor. Third, I was surprised that the individual had concealed his 2002 arrest from his sister and led her to believe that he had stopped drinking alcohol in February 2001. ⁷ One of the tenets of AA is the admission to others of the exact nature of one's wrongs. See <http://www.aa.org>. Fourth, I am concerned that the individual has lied to the DOE before about his intentions with regard to alcohol. He told the DOE in 2001 that he would not drink and drive but did so in 2002 anyway. It is also troubling that the individual's excessive drinking and concomitant violent behavior in 2002 occurred after he had completed 30 hours of Level I Drinking Drivers Program and was still on probation for another alcohol-related

⁶ Several co-workers and supervisors testified or provided written statements that they either never saw the individual consume alcohol or did not believe that he had a problem with alcohol. See Tr.at 254, 256, 263, 268, 273, 278, 284; Exs. K, M. This evidence is entitled to only neutral weight since the individual admits that he has a problem with alcohol and two medical experts agree that the individual suffered from alcohol abuse.

⁷ Several witnesses testified that the individual is an honest person and would believe him if he says that he will not drink again. Tr. at 252, 268, 272, 277, 285. I only accorded these testimonies neutral weight because the individual gave his word to the Personnel Security Specialist during PSI #3 that he would not drink and drive yet he consumed alcohol and drove in 2002. He also never informed his sister of the 2002 incident even though he asked her to testify on his behalf. He apparently led her to believe that he had stopped drinking after the 2001 incident.

offense. Finally, the individual suggests that the 2001 and 2002 incidents are aberrational. However, during PSI #4, the individual admitted that he has experienced memory loss when he consumed alcohol. Ex. 6 at 20. He told the Personnel Security Specialist in 2002 that “sometimes I drink too much and I don’t remember the previous night.” *Id.* He could not recall, however, how many times in 2001-2002 that he experienced memory loss due to alcohol consumption *Id.* The individual’s statements as recounted above strongly suggest that the individual consumed alcohol excessively on more than the occasions that resulted in his arrests. In the end, after listening to the individual’s testimony and observing his demeanor at the hearing I am uncertain whether the individual’s claims of sobriety are true or not, or whether I can rely on the individual’s word that he will refrain from consuming alcohol in the future.

Even if I accept as true the individual’s claim that he has abstained from alcohol for 12 months or more, I find that he has not shown sufficient evidence that he has been actively engaged in a support group such as a 12-Step program. The individual claims that he has attended AA weekly. However, he has provided no documentary evidence such as sign in sheets to support this fact. This evidence would be useful because I have some reservations about the individual’s candor as explained in this Decision. Moreover, the individual did not provide any testimony about what steps in AA that he has completed to date. Furthermore, he provided no testimonial evidence other than general statements to convince me how AA is helping him to maintain his sobriety. In addition, the individual provided no testimony whether he has found an AA sponsor yet.⁸ In sum, I find that the individual has not presented sufficient evidence to convince me that he has internalized the concepts espoused by the AA program or any other 12-Step program.

Lastly, to achieve rehabilitation, the individual also must show that he has changed his lifestyle in a manner that translates into improvement in his interpersonal relations, and social and occupational functioning. *See* Psychiatric Report at 2 (Exhibit 11). The individual is currently attending domestic violence classes pursuant to a court order. According to documents submitted by the individual, he is enrolled in a 52-week Batterer’s Intervention Program. Ex. P, Q. As of October 2003, he had eight more months to complete in the program. Ex. O. Since these classes may help the individual improve his interpersonal relations, their successful completion would be a positive factor in the individual’s rehabilitation efforts. The individual has not demonstrated that he successfully completed the domestic violence program, or has changed his lifestyle in a manner that “translates into improvement in his interpersonal relations, social and occupational functioning.” Accordingly, I cannot find that the individual has fulfilled the second prong of the rehabilitation program outlined by the DOE consultant-psychiatrist.

3. Violent Behavior

To address the DOE’s security concerns under Criterion L, the individual has presented documentary evidence that he has completed 20 weeks of a 52-week Batterer’s Intervention Program and testimonial evidence that he is an honest, reliable person. *See* Exhibits O, P, Q; Tr.

⁸ I did accord weight to the fact that the individual has seen a Clinical Psychologist 10 times over a 15-month period, July 2002 and October 2003. His Clinical Psychologist deferred to the DOE with regard to a recommendation for treatment, noting that she was not sure what she would recommend clinically.

at 268, 272, 277, 285,;Ex. L. In addition, he has submitted positive performance evaluations for the years 1996 through 2003 (Ex. A) as well as commendations, certificates of appreciation, news articles relating to special acts that he has performed and examples of the community service in which he engages. (Exhibits C, D, E, F and G). Finally, the individual testified that he is a dedicated worker and a good employee. Tr. at 175. Further, he argues that he would never jeopardize national security. *Id.*

The Criterion L concern at issue involves that violent behavior that the individual displayed in June 2002 when he inflicted corporal injury on his girlfriend. As an initial matter, I am not willing to consider the 2002 incident an isolated occurrence in view of other evidence in the record. There is probative evidence that the individual hit his wife in 1988. Moreover, the record shows that in 2001 the individual kicked the passenger side of his vehicle so hard in an attempt to remove his girlfriend from his vehicle that the passenger window shattered. This action indicates to me that the individual has a potentially violent propensity.⁹

I also considered that alcohol may have contributed in whole or in part to the violent outbursts that occurred in 2001 and 2002. However, there is no indication in the record that alcohol was a factor in the individual's behavior in 1988. More importantly, however, the court not only required alcohol counseling when it disposed of the criminal charge associated the 2002 Incident but it required the individual to attend domestic violence classes.

In the end, the pivotal issue for mitigation with regard to the Criterion L concern in question is whether the individual is rehabilitated or reformed from his violent behavior. I find that until the individual successfully completes the domestic violence course that the court mandated, I cannot find that he is rehabilitated or reformed. Since the individual has eight more months of domestic violence classes to attend, I find that he has not yet mitigated the DOE's Criterion L concerns.

C. Conclusion

In the above analysis, I have found that there is sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F, H, J, and L as to whether the individual's suspended access authorization should be restored. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has failed to bring forth sufficient evidence to mitigate all of the security concerns advanced by the DOE. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access

⁹ While the individual's violent or angry outbursts apparently have not manifested themselves at work, there is no guarantee that they will not in the future affect his ability to perform his job.

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: February 18, 2004