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April 27, 2004
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing
Date of Filing: September 11, 2003
Case Number: TSO-0067

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold 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. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. 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 be restored.

I. Background

For several years, the individual has been employed in a position that requires him to hold a DOE security clearance. On May 30, 2002, the individual was charged with Driving Under the Influence (DUI) of alcohol. The DOE conducted a Personnel Security Interview (PSI) with the individual in September 2002 to obtain information regarding the circumstances surrounding the DUI 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 in January 2003, and memorialized his findings in a report (Psychiatric Report or Exhibit 8). In the Psychiatric Report, the DOE consultant-psychiatrist found that the individual has a problem with drinking which cannot be adequately diagnosed because the individual did not cooperate in the interview. Ex. 8 at 5. Further, the DOE consultant-psychiatrist opined that "there are sufficient indications to point to the fact that [the individual] does have a mental condition which might cause a significant defect in judgment or reliability." Ex. 8 at 1.

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.

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 three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (Criteria H, J, 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 September 15, 2003, the Director of the Office of Hearings and Appeals appointed me the Hearing Officer in this case. After the Director approved an extension of time to accommodate the parties' schedules, I conducted a hearing in this matter in January 2004. 10 C.F.R. § 710.25(g). At the hearing, six witnesses testified, one on behalf of the DOE and five on behalf of the individual. In addition to the testimonial evidence, the DOE tendered 18 exhibits into the record, and the individual submitted eight 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

² 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).

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 and the Security Concerns at Issue

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

With regard to Criterion H, the DOE relies on the opinion of a DOE consultant-psychiatrist that the individual suffers from a mental condition that causes, or may cause, a significant defect in his judgment or reliability. In the Psychiatric Report, the DOE consultant-psychiatrist does not specify a mental condition from which the individual suffers. He does, however, cite examples in that report to support his opinion that the individual's lack of frankness during the psychiatric interview shows that the individual is dishonest, unreliable and untrustworthy. It is the individual's dishonesty, unreliability and untrustworthiness, according to the DOE consultant-psychiatrist, that is a mental condition for purposes of this case. At the hearing the DOE consultant-psychiatrist testified that it is possible to characterize this mental condition as a "subsyndromal" mental condition. Transcript of Hearing (Tr.) at 85. From a security perspective, any mental illness or condition is a 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.

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 has a problem with drinking which cannot be adequately diagnosed due to the individual's lack of cooperation in the interview. Second, on May 30, 2002 the individual was arrested for DUI (May 2002 DUI). The individual admitted that he had consumed four or five beers from 8:00 a.m. to noon on the day he was arrested and charged with DUI. He also admitted that his Blood Alcohol Content (BAC) registered .148 on the day in question. Third, during the September 2002 PSI, the individual made statements worrisome to the Personnel Security Specialist about his drinking habits in the 1980s. Moreover, the individual revealed during the PSI that he had attended a 10-week class at a drug and

alcohol treatment center in 1996 and Alcoholics Anonymous (AA) meetings. Excessive consumption of alcohol is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses and increases the risk that classified information may be unwittingly divulged.

To support its Criterion L concerns, the DOE cites the DOE consultant-psychiatrist's statements in the Psychiatric Report that he (1) did not trust the data that the individual gave him and (2) believed that the individual had minimized his alcohol issues and otherwise exhibited poor judgment and unreliability. The DOE consultant-psychiatrist's observations of the individual allegedly call into question the individual's honesty, reliability and trustworthiness from a security context.

IV. Findings of Fact

In May 2002, the individual was working the "graveyard" shift at his place of employment. Tr. at 180. In late May 2002, the individual had been on leave from work a few days. He began preparing to resume his night work schedule on May 30, 2002 by staying up all night. *Id.* At 8:00 a.m. on May 30, 2002, the individual began drinking beer while working in his yard. Ex. 7 at 18. By noon that day, he had consumed four to five beers. *Id.*

Sometime after noon on May 30, 2002, the individual decided to purchase lunch from a restaurant. While driving his vehicle, the individual's vehicle struck a telephone booth. Ex. 7 at 17, Ex. 11. The police arrived at the scene and arrested the individual for Failing to Control his Vehicle and DUI. *Id.* The individual's blood alcohol content registered .148 on the day in question.

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 be restored at this time. I 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 that I make in support of this decision are discussed below.

³ Those 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.

A. Criteria H and L

Under the Part 710 regulations, the DOE may rely on the diagnosis of a psychiatrist that a person suffers from a mental condition or illness that causes or may cause a significant defect in judgment and reliability as a reason for concluding that a security concern exists under Criterion H. In this case, the DOE determined that derogatory information existed under Criterion H solely on the basis of the DOE consultant-psychiatrist's opinion that "there are sufficient indications to point to the fact that he [the individual] does have a mental condition which may cause a significant defect in judgment and reliability." Ex. 8 at 1.

As for Criterion L, the DOE relies on the observations made by the DOE consultant-psychiatrist in the Psychiatric Report as the basis for citing this criterion as a reason for suspending the individual's security clearance.

The individual has challenged the underlying bases for the DOE consultant-psychiatrist's opinion and suggests that no security concern exists under either Criterion H or Criterion L. To support this position and to controvert the Criterion H allegations, the individual presented testimonial evidence from a board-certified forensic psychiatrist and documentary evidence from a clinical psychologist. To address the Criterion L concerns, the individual relies on the testimony of the board-certified psychiatrist and other lay witnesses as well as documentary evidence relating to his work performance and work attendance history.

This case is difficult to resolve because two experts have presented conflicting psychiatric opinions about the individual's mental status. Both experts are highly qualified professionals and each has four decades of experience in the psychiatric field.

1. The DOE Consultant-Psychiatrist's Opinion

The DOE consultant-psychiatrist is board certified in psychiatry and has practiced psychiatry for more than 40 years. He has authored three books and numerous articles.

In the Psychiatric Report, the DOE consultant-psychiatrist did not identify by name the mental condition from which the individual allegedly suffers. At the hearing, the DOE consultant-psychiatrist testified that the individual "did not rise to the level of a diagnosable psychiatric condition." Tr. at 54. He added that a "mental condition, however, I interpret as a way of thinking, a way of acting. Sometimes it's an attitude or whatever that may impact in my opinion on the ability to trust him with access to government secrets." *Id.* When pressed at the hearing, the DOE consultant-psychiatrist stated that the individual has a "subsyndromal mental condition." *Id.* at 85. He explained that this term is not found in the Diagnostic and Statistical Manual for Mental Disorders, Fourth Edition, Text-Revised (DSM-IV-TR) but it means that "it's an illness which has features which can be found in various mental conditions or various diagnosable illnesses

but does not rise to that level.” *Id.* The mental condition here, according to the DOE consultant-psychiatrist is the individual’s dishonesty, unreliability and untrustworthiness. *Id.* at 94.⁴

As for why the DOE consultant-psychiatrist concluded during the psychiatric examination that the individual is dishonest, unreliable, and untrustworthy, he cites numerous reasons. He first noted that when he asked the individual why the DOE requested that he submit to a psychiatric examination, the individual responded, “I have no idea. It probably has something to do with 9/11.” Ex. 8 at 2. When the DOE consultant-psychiatrist asked if anything had come up in the PSI that might have led the DOE to seek a psychiatric evaluation of the individual, the individual responded, “Only thing was that I went to AA before.” *Id.* These two exchanges, according to the DOE consultant-psychiatrist, show that the individual did not exhibit frankness with him.

On the subject of his past attendance at a substance abuse course, the individual related to the DOE consultant-psychiatrist that he had completed the course. The DOE consultant-psychiatrist noted, however, that according to Exhibit 9 the individual did not complete the course. The DOE consultant-psychiatrist suggests that this untruth casts aspersion on the individual’s honesty.

The DOE consultant-psychiatrist also is troubled by inconsistencies between what the individual told him his drinking habits were in college and what he told the personnel security specialist about the same matter.⁵

When asked in January 2003 about his blood alcohol level on May 30, 2002, the individual told the DOE consultant-psychiatrist that his BAC was “maybe .13.” Tr. at 29. The DOE consultant-psychiatrist believes this statement shows that the individual was “minimizing” because the DOE personnel security specialist had told him twice in September 2002 that his BAC was .148. *Id.*

As for his drinking pattern since May 2002, the individual told the DOE consultant-psychiatrist that he rarely drinks. However, the DOE consultant-psychiatrist noted that the individual told the Personnel Security Specialist that he drinks as often as every other

⁴ The DOE consultant psychiatrist testified that he did not place the individual into any NOS (Not Otherwise Specified) category in the DSM-IV-TR because the individual did not provide him with enough information to render such a diagnosis. Tr. at 90.

⁵ In his Psychiatric Report, the DOE consultant-psychiatrist also pointed out what he thought at the time was a falsehood by the individual. When the DOE consultant-psychiatrist questioned the individual about his arrest for domestic violence in 1996 he asked the individual if the arrest resulted in any punishment or restriction other than a fine. The individual responded negatively. At the time, the DOE consultant-psychiatrist knew that the individual had received two years of probation. At the hearing, the DOE consultant-psychiatrist changed his mind on this matter after he learned that the individual had received two years of unsupervised probation in connection with the arrest. *See* EX. 13. The DOE consultant-psychiatrist admitted at the hearing that the probation in question would not be considered a restriction because it is a “non-reporting probation.” Tr. at 80.

weekend. *Id.* at 32. Moreover, after the DOE consultant-psychiatrist inquired about the individual's drinking pattern since May 2002, the individual stated, "You know, when I came in, I thought you already knew about the DUI so I was thinking, what else could have caused them to send me here?" According to the DOE consultant-psychiatrist, this statement shows that the individual was "trying to cover up the tardiness of the revelation" of the DUI. Ex. 8 at 4.

On cross-examination, the DOE consultant-psychiatrist testified that his diagnosis of the "subsyndromal" mental condition would be affected that if he were to learn that the individual had been honest, credible and trustworthy in his personal life and had not been untruthful with him during the psychiatric interview. Tr. at 101-102. In the face of such evidence, the DOE consultant-psychiatrist would conclude that the individual's mental condition was situational. *Id.* at 102.⁶

Finally, the DOE consultant-psychiatrist pointed out that it is impossible to know what the individual's drinking pattern currently is or has been through the years because he weaves stories that vary from the information that the DOE consultant-psychiatrist has.⁷ This shows, according to the DOE consultant-psychiatrist, that the individual is minimizing and has a problem with his judgment and reliability.

2. The Forensic Psychiatrist's Opinion

The forensic psychiatrist is board certified in general psychiatry and forensic psychiatry and has practiced psychiatry for almost 40 years. The forensic psychiatrist also completed a one-year fellowship in occupational psychiatry, a discipline that looks at work-related issues, incidents, and problems, including alcohol and other substance abuse. Tr. at 105.

In contrast to the DOE consultant-psychiatrist (*id.* at 45), the forensic psychiatrist began his examination of the individual by taking a history that included medical history, family history, sexual history, and developmental history beginning in his childhood. *Id.* at 105-108.

Of relevance to the issues in this case is the following information gleaned by the forensic psychiatrist during his interview. The individual was reared in a strict home and

⁶ The DOE consultant-psychiatrist remained in the hearing room and listened to the testimony of the forensic psychiatrist and the individual. At the conclusion of their testimony, the DOE consultant-psychiatrist remained firm in his diagnosis. He did not, however, stay to listen to the testimony of the individual's wife or two of the individual's managers.

⁷ In his Psychiatric Report, the DOE consultant-psychiatrist stated that the individual had previously been diagnosed with alcohol abuse but that the individual denies he abused alcohol. At the hearing, the DOE consultant-psychiatrist admitted that the alcohol abuse diagnosis was given by a social worker who did not provide any evidence to support that diagnosis. In the end, the DOE consultant-psychiatrist decided not to rely at all on the diagnosis rendered by the social worker. Since the alcohol abuse diagnosis was (1) given by a person not recognized by the Part 710 regulations as qualified to render a diagnosis under Criteria H, (2) not supported by any rationale or findings, and (3) rejected at the hearing by the DOE consultant-psychiatrist, I accord no weight to the DOE consultant-psychiatrist's concern that the individual denied that he had been diagnosed as suffering from alcohol abuse.

described his father as “scary.” *Id.* at 108. According to the forensic psychiatrist, the individual gets scared when confronted by those in positions of authority. *Id.* The individual also tries not to displease persons but in so doing the individual comes across as defensive. In addition, the individual does not expound or expand on things because he is trying not to say anything that will cause someone to dislike him. According to the individual’s medical history, he has suffered from severe anxiety episodes since childhood. *Id.* at 109. In recent years, the individual has suffered from very severe anxiety connected with driving an automobile. The individual sought treatment in 2000 from a psychiatrist to address this problem. The psychiatrist prescribed an antidepressant medication, Celexa, for the individual. *Id.* at 155. In November 2003, the individual consulted with a physician and a psychiatrist again for anxiety after he learned that he would be required to travel six hours by automobile to meet with the DOE consultant-psychiatrist. This time the medical professionals prescribed Buspar and Clonopin to control the anxiety. *Id.* at 112, 158.

Regarding the matters that the DOE consultant-psychiatrist highlighted as emblematic of the individual’s lack of candor, the forensic psychiatrist provided the following information. First, the forensic psychiatrist testified that stress might have affected the individual’s ability to respond to the DOE consultant-psychiatrist’s questions. He pointed out that the individual had a phobia about driving and had to drive six hours to reach his destination. Enroute to the DOE consultant-psychiatrist’s office, the individual also got lost causing him to be a few minutes late for the interview.

As for why the individual did not readily volunteer at the beginning of the interview that he had been sent because of the May 2002 DUI, the forensic psychiatrist stated that the individual thought the DOE consultant psychiatrist already knew about the DUI. The forensic psychiatrist opined that the individual was not trying to deceive the DOE consultant-psychiatrist by his response. In fact, the forensic psychiatrist believes that the individual’s reference to “9/11” is symbolic of the disaster going on in the individual’s personal life.

The forensic psychiatrist does not agree that the individual was “minimizing” when responding to the DOE consultant psychiatrist. *Id.* at 130. The forensic psychiatrist maintains that one must look at the context of how this man thinks and how he views himself and life in assessing the veracity of his responses. The forensic psychiatrist related that the individual is an average guy “who doesn’t think outside the box too much.” *Id.* The individual, according to the forensic psychiatrist, is so anxious at times that he is perceived as defensive. *Id.* at 131. Moreover, the forensic psychiatrist reports that the individual is “cautious, guarded, and careful” about whom he trusts. *Id.* This defensiveness and anxiousness, however, does not rise to the level of a mental condition or illness, according to the forensic psychiatrist.

The forensic psychiatrist also points out that the individual tends to digress in thought and speech, often getting lost in mid-sentence. *Id.* at 108. In addition, the individual answers questions before the questioner completes asking the question. *Id.* at 121-122. These

tendencies, suggests the forensic psychiatrist, might account for the individual's inconsistent responses to questions posed to him.

With regard to the individual's statement that his BAC on May 30, 2002 was "maybe .13," the forensic psychiatrist testified that it would have been instructive if the DOE consultant psychiatrist had asked the individual directly about how he remembered the .13. Further, according to the forensic psychiatrist, it would have been enlightening had the DOE consultant-psychiatrist confronted the individual about the discrepancy. For example, the forensic psychiatrist suggested that the DOE consultant-psychiatrist could have asked the individual questions such as the following: "Have you heard the number was different?" or "Other people said you had a different level." *Id.* at 146. The forensic psychiatrist testified that these kinds of questions might have elicited more probative information that would have shown whether the individual was lying or not. Based on his three and one-half hour interview of the individual and the responses that the individual provided during that interview, the forensic psychiatrist found the individual to be an honest person. *Id.* at 138.

3. The Individual's Testimony

To address the DOE's concerns about statements the individual made to the Personnel Security Specialist during the 2002 PSI, the individual testified that he was not trying to mislead the Personnel Security Specialist when he answered the questions about his past usage of alcohol. He stated that it has been 15 years since he was in college and he was thinking of the worse case scenarios when he answered the questions about his alcohol usage at that time. *Id.* at 188. When asked if he was listening carefully to the questions posed by the Personnel Security Specialist, he replied, "I thought I was. I couldn't have been." *Id.* at 189. He acknowledged that he has a bad habit of interrupting someone when they are talking because he thinks he knows what they are going to say. He explained that he finishes other people's thoughts in his mind and answers the question based on what he thinks they are going to ask. He added that he is trying to improve this flaw.

As for why he did not state immediately to the DOE consultant-psychiatrist that he had been sent there because of the DUI, the individual explained that the Personnel Security Specialist indicated that the purpose of the psychiatric referral was to explore issues relating to alcohol. He assumed that the DOE consultant-psychiatrist knew the reason for the referral as well. Regarding his response that he was sent because of "9/11," the individual explained that he knew of others at his facility who had received multiple DUIs and who had never been sent by the DOE for a psychiatric interview. People at his site speculated that he was being sent for a psychiatric interview after one DUI because "security was beefed up because of '9/11'." *Id.* at 191.

The individual explained that when the DOE consultant-psychiatrist asked him if there were any other alcohol-related incidents, he thought he meant other than the DUI. *Id.* at 197. According to the individual, "I was obviously there for the DUI." *Id.* Because he interpreted the question as set forth above, the individual decided that the only other

alcohol-related event in his life was his attendance at AA. The individual made it clear, however, that he only went to AA in 1996 to pacify his wife and attempt to derail a possible divorce, not because of any alcohol-related incident. *Id.* at 193.

In connection with the substance abuse program that he entered in 1996 to appease his wife, the individual testified that he completed the course and provided for the record, Exhibit E, a letter from the Program Coordinator of the Counseling Center. That letter indicates that he completed the education component of the program. According to the individual, when he told the DOE consultant-psychiatrist that he had completed the substance abuse counseling program, he was referring to this program.

The individual confirmed that the six-hour drive to the DOE consultant psychiatrist's office was very difficult for him. He claims that he never tried to minimize the amount of alcohol that he consumed or the problems that he was confronting. When asked why his responses to the DOE consultant-psychiatrist were different from his responses to the Personnel Security Specialist, the individual responded:

I have no idea. The analyst, he was asking me stuff kind of quick. Like I said, just trying to think through in my head what he was saying and just kind of blurted out an answer.

Id. at 204.

4. The Individual's Wife's Testimony

The individual married his current wife three years ago. *Id.* at 253-254. The two dated for two years before they wed. According to the individual's wife, her husband exemplifies reliability and trustworthiness. She explained that when he married her, the individual took on the enormous responsibility of caring for her son who is mentally and physically handicapped. She related that her son is 9 years old and still wears diapers. According to the individual's wife, the individual willingly changes her son's diapers and tends to his other needs. For example, the individual administers medication to her son which if not given at proper times and in proper doses is a "life or death" situation. *Id.* at 257.

The individual's wife was not surprised that the individual gave the DOE consultant-psychiatrist the impression of being less than forthright. *Id.* at 258. She explained that getting even trivial information out of him is like pulling teeth. He starts out the conversation and then ends up "going around the subject." She added, "he doesn't mean to, he's not trying to deceive." *Id.*

5. Psychological Test Results

The forensic psychiatrist referred the individual to a licensed clinical psychologist for some psychological testing. Ex. F. The psychologist administered the Personality Assessment Inventory (PAI) and the Revised Neuroticism, Extraversion, Openness Personality Inventory (NEO). Tr. at 165. With regard to the PAI, the psychologist noted

that the individual's level of defensiveness was too great to consider the test results valid. The PAI is used to determine if there is an Axis I diagnosis.⁸

The NEO test, according to Exhibit F, looks at longstanding personality traits and tries to correlate them with an Axis II diagnosis.⁹ While the NEO detected a level of anxiety and tension that appears to be longstanding, the test results did not trigger information that would yield an Axis II diagnosis. The psychologist who administered the NEO found that the individual is "Mr. Average, a rather unassuming, rather mainstream type of individual." Ex. F at 2.

6. Managers' testimony

A manager for whom the individual has worked for four years testified that the individual has an exemplary performance and attendance record. Tr. at 227-229. He added that the individual's judgment is sound and provided a specific example of how conscientious the individual is about ensuring the protection of classified information and material. *Id.* at 234.

Another senior manager who supervises 175 people, including the individual, testified that over the years he has dealt with the individual in various capacities. *Id.* at 247. He stated that the individual is trustworthy, reliable and of sound judgment. On the reliability issue, the senior manager noted that the individual had perfect attendance for two consecutive years. *Id.* Regarding his trustworthiness, the senior manager related that there was an emergency at his facility one time. *Id.* The senior manager asked the individual to work overtime without any supervision and to use his ingenuity and expertise to perform some tasks to ensure the facility would run throughout the night. According to the senior manager, the individual performed this task well. *Id.*

7. Hearing Officer's Findings on Criteria H and L

With regard to Criterion H, I find that the individual has provided compelling evidence that convinces me that he does not suffer from a mental condition or illness of such a nature that may cause a significant defect in his judgment and reliability. In evaluating the conflicting psychiatric opinions in this case, I found the forensic psychiatrist's evaluation of the individual to be more comprehensive than that of the DOE consultant-psychiatrist. It was surprising to learn that the DOE consultant-psychiatrist had not elicited any kind of history from the individual prior to conducting his psychiatric evaluation. For this reason, the DOE consultant-psychiatrist did not know that (1) the individual suffered from anxiety attacks connected with driving an automobile; (2) the individual was taking prescription medication to address his anxiety issues; and (3) the individual feared unfamiliar authority figures. In contrast to the DOE consultant-psychiatrist's limited focus on the individual in this case, the forensic psychiatrist

⁸ According to the DSM-IV-TR, an Axis I diagnosis refers to clinical disorders and other conditions that may be a focus of clinical attention.

⁹ An Axis II diagnosis refers to personality disorders and mental retardation. *See* DSM-IV-TR at 27.

examined the totality of the individual's life, including factors that might account for the individual's reaction to people and situations, before deciding that the individual does not suffer from a mental illness or condition that could cause a significant defect in his judgment and reliability.

From a purely common sense perspective, I find that the individual adequately explained the reasons for most of the answers that he provided during the psychiatric interview. I agree with the forensic psychiatrist that it was not unreasonable for the individual to assume that the DOE consultant-psychiatrist knew that the DOE referred him for a psychiatric evaluation to explore alcohol-related issues. The individual's statement to the DOE consultant-psychiatrist that the DOE may have referred him for the evaluation because of 9/11 does not appear designed to deceive or mislead in view of the individual's rationale for the statement. Specifically, the individual testified candidly that he knew many persons at his facility who had received multiple DUIs but none whom had been referred by the DOE for a psychiatric examination. Moreover, the individual related that there was speculation at his worksite that he was being sent for a psychiatric evaluation because DOE security was scrutinizing security clearance holders more closely in the wake of September 11, 2001.

In addition, the individual convinced me that he earnestly believed that the DOE consultant-psychiatrist knew about his DUI prior to the psychiatric examination. For this reason, the individual thought the DOE consultant-psychiatrist was seeking information about other alcohol-related incidents in his life when he asked if anything had come up in the PSI that might have caused the DOE to refer him for the psychiatric examination.

Regarding his past attendance at a substance abuse course, the DOE consultant-psychiatrist relied on a statement by a social worker that the individual dropped out of treatment after his spouse initiated divorce proceedings.¹⁰ The individual provided a letter from the treatment center showing that he had completed the center's education program. *See* Ex. E. The individual testified credibly that when told the DOE consultant-psychiatrist that he had completed the substance abuse counseling program, he was referring to this program. Ideally, the DOE consultant-psychiatrist would have inquired during the psychiatric examination why the social worker stated that he had dropped out of treatment. The individual's response might have elicited the information contained on Exhibit E, or would have clearly established that the individual was lying to the DOE consultant-psychiatrist.

After observing the individual's demeanor at the hearing for more than seven hours and listening to his testimony, it is my opinion that the individual was honest in responding to all questions posed at the hearing. It appeared to me, however, that the individual processes information in a unique manner. For example, he repeatedly digressed in his hearing testimony to the point where I would remind him that he was not answering the question before him. Tr. at 214. His circumlocutions resulted at times in his getting so

¹⁰ It is noteworthy that the social worker opined that the individual exhibited no significant defect in judgment and reliability due to a mental illness upon his release from the program. Ex. 9.

far off the subject under discussion that he appeared to forget what subject he was addressing. In addition, the individual sometimes responded to a question using a frame of reference that was different from my own. For example, when I inquired whether he consumed alcohol with dinner, the individual thought the term “dinner” referred to dining out at a restaurant. It was only after the individual related that he does not go out to dinner often because his 9 year old stepson is so disruptive that I realized he must use a different term to refer to eating meals at home in the evening. I immediately explained to him what my question was designed to elicit. My observations of the individual also confirmed those of the forensic psychiatrist, who opined that the individual’s anxiety causes him to act like a jackrabbit, quickly answering questions without adequately reflecting on his responses. My review of the transcript of the personnel security interview (Ex. 7 at 20-24) in this case also shows that the individual cut the interviewer off before she completed a question and answered questions before the questions were completely formulated. Despite the individual’s communication idiosyncrasies, I found him to be an earnest person. Furthermore, I did not find that he was trying to mislead or deceive the DOE during his hearing testimony.

As for the inconsistencies between what the individual told the Personnel Security Specialist and what he told the DOE consultant-psychiatrist about his drinking habits in college, I found the individual’s explanation of the inconsistencies to be candid and persuasive.

With regard to the individual’s statement that his BAC in connection with the 2002 DUI was “maybe .13,” the individual testified that he spends eight hours of his workday looking at numbers. He testified credibly that for him, numbers “run together and that after a week, he does not remember any numbers.” Tr. at 183. He convinced me during his hearing testimony that he simply did not remember in January 2004 the precise number that he registered on his BAC test as recounted by the Personnel Security Specialist four months earlier. In addition, the individual’s attorney made a persuasive argument that if the individual wished to minimize his BAC results that he would have selected a number closer to the legal cutoff limit of .10.

Finally, with regard to the discrepancies between what the individual told the Personnel Security Specialist about his drinking habits since May 2002 and what he told the DOE consultant-psychiatrist, the individual provided the following information. He testified that his drinking pattern over the last six months is “sporadic.” *Id.* at 199. He added that he has consumed alcohol perhaps three times during that period. *Id.* Three times in a six-month period could be construed as either “sporadic,” as the individual stated at the hearing or “rare” as the individual told the DOE consultant-psychiatrist. When asked at the hearing if he drinks “every other weekend” as he told the Personnel Security Specialist, he replied, “no, not on a regular basis at all.” *Id.* at 200. He testified that when he told the Personnel Security Specialist that he drank every other weekend, it was a “guesstimate.” *Id.* at 201. He further explained that there have been times in the past when he probably drank every other weekend. *Id.*

In the end, the individual has convinced me that he was not untruthful in the psychiatric interview. He also convinced me that he has been honest, credible and trustworthy in his personal life. These factors, combined with the forensic psychiatrist's sound opinion that the individual does not suffer from a mental condition or illness which may cause a significant defect in his judgment and reliability, mitigate the DOE's security concerns under Criterion H.

As for Criterion L, the individual provided evidence that convinces me he is honest, reliable and trustworthy in his personal and professional life. For example, he and his wife convinced me that the individual's attentiveness to the needs of his 9-year old mentally and physically handicapped stepson demonstrates his personal reliability and trustworthiness. The individual's managers provided specific examples of the individual's dedication to his job and his reliability and trustworthiness on matters of national and physical security at his work site. The managers and the individual's wife also attested to the individual's reputation for honesty.

The forensic psychiatrist convinced me that the individual's pre-existing anxiety condition coupled with stress affected the individual's ability to respond succinctly to the DOE consultant-psychiatrist's opinions. I found the forensic psychiatrist's assessment very telling that one must look at the context of how this man thinks and how he views himself and life in order to assess the veracity of his responses. I personally observed during the seven and one-half hour hearing how the individual digresses in responding to questions, how he answers a question before allowing the questioner to complete the question, how he responds to a question with circumlocutions, and how he interprets words differently from others. In short, the individual is not a good communicator. This observation was also made by one of the individual's managers who testified at the hearing. Tr. at 248. As discussed above, despite the individual's communication shortcomings, I found his testimony to be candid and his demeanor to be earnest. In the end, it is my assessment based on observing the demeanor of the individual and listening to the testimony of the individual's wife, two managers, and the forensic psychiatrist that the individual is honest, reliable and trustworthy. To the extent the DOE consultant-psychiatrist is correct that the individual exhibited a lack of frankness during his psychiatric interview, I find that the behavior was situational.

Based on a careful examination of the testimonial and documentary evidence, I find that the individual has mitigated the Criterion L concerns in this case.

B. Criterion J

The DOE consultant-psychiatrist testified that he did not have enough information to diagnose the individual as suffering from alcohol abuse or dependence or to find that the individual consumes alcohol habitually to excess. It is the DOE consultant-psychiatrist's opinion that anyone who has a DUI with a BAC of one and one-half times the legal limit has a problem with alcohol. Tr. at 82, 92.

The forensic psychiatrist also opined that the individual is neither alcohol dependent nor abusive. *Id.* at 117. He further concluded that there is no pattern that would indicate that the individual uses alcohol to excess. *Id.* The forensic psychiatrist found it noteworthy that the individual did not turn to alcohol during his divorce or its aftermath in the late 1990s. In fact, the forensic psychiatrist related that the individual did not consume any alcohol for months after his divorce. The forensic psychiatrist testified that if the individual had a problem with alcohol he would have expected that the problem would have manifested itself during a period of distress such as the divorce. The forensic psychiatrist also opined that, with the exception of the 2002 DUI, there is no current evidence that alcohol has negatively impacted the individual's life. For example, there is no evidence that the individual's alcohol use has impacted his home life or his work responsibilities. In addition, the forensic psychiatrist provided documentary evidence showing that nine of the 10 laboratory tests measuring the individual's liver enzymes yielded results within normal levels in December 2003. *See* Ex. G. The forensic psychiatrist also provided medical documentation to support his opinion that the one liver enzyme that yielded a slightly elevated level, the GGT enzyme, is not a medically significant fact in view of the normal AST and ALT enzyme levels. Finally, the forensic psychiatrist highlighted the results of psychological tests administered by a Ph.D. clinical psychologist to the individual. According to the Psychologist, "keeping in mind his general level of defensiveness, [the individual] is not on either of the test procedures endorsing items that are typical of individuals who have addiction problems." Ex. F.

The individual's wife testified at the hearing that her husband's DUI was aberrational. *Id.* at 256. She related how upset she was upon learning that the incident had occurred. According to the individual's wife, her husband learned a difficult lesson from the experience. *Id.* at 255.

One of the individual's managers testified that he has supervised the individual for four years and has never seen any sign that the individual had a problem with alcohol. *Id.* at 229. The manager explained that he does fitness for duty evaluations for his employer and previously worked as a paramedic. As a result of his professional responsibilities and training, the manager related that he would easily recognize an alcohol problem in the individual if one existed. *Id.*

A senior manager testified at the hearing that in October 2003 he hosted a barbeque that the individual attended. *Id.* at 249. According to the senior manager, there was alcohol at the barbeque but he observed that the individual only consumed soft drinks. *Id.*

The individual testified that the DUI is "one of the dumbest things I've ever done in my life." *Id.* at 212. He added that "That's not my nature. That's not the way I am. I made a mistake . . . What I can also say is I'm just glad nobody got hurt because it could be a lot, lot worse than just this." *Id.* According to the individual, since the DUI he has been stopped at three sobriety checkpoints in the last four months without incident. He has not stopped consuming alcohol but claims that he does not consume it to excess. *Id.* at 219.¹¹

¹¹ The fact that the individual attended AA and a substance abuse education course in 1996 does not demonstrate that the individual used alcohol habitually to excess or was alcohol dependent or abusive during that time period. It is the individual's contention that he attended these alcohol-related courses not to address an alcohol problem but to appease his wife and prevent a divorce. According to the individual, his wife asked him why he was attending these alcohol-related courses after he began going. As discussed in footnote 7 supra, I did not accord any weight to the handwritten documentation from the Substance Abuse Treatment Center that provided a diagnosis of alcohol abuse.

The nature and circumstances surrounding the individual's May 2002 DUI are very troubling. The individual's consumption of four or five beers on an empty stomach and his subsequent decision to operate a motor vehicle demonstrates extremely poor judgment. The ensuing accident and arrest for DUI underscores the gravity of the situation.

Weighed against these negative factors are the following positive ones. It has been almost two years since the individual's DUI arrest and he has not been involved in any other alcohol-related incidents. The testimonial and documentary evidence convince me that the DUI was an isolated event. The forensic psychiatrist and the lay witnesses convince me that the individual does not habitually consume alcohol to excess for purposes of Criterion J. The individual's liver enzyme tests suggest that the individual is not showing any physiological effects from what alcohol he is consuming. Hence, those laboratory results provide additional evidence that the individual is not consuming alcohol habitually to excess. Finally, while not as probative as the laboratory results, the results from the two psychological tests administered to the individual show that the individual does not "endorse items that are typical of individuals who have addiction problems." Ex. F.

In the last analysis, the evidence in this case demonstrates that neither a licensed clinical psychologist nor a psychiatrist has diagnosed the individual as suffering from alcohol abuse or dependence, and that the individual has not been, or currently is, a user of alcohol habitually to excess. I find therefore based on this record that the individual has mitigated the Criterion J concerns in this case.

C. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria 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 brought forth sufficient evidence to mitigate all of the security concerns advanced by the DOE. I 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 authorization should be restored.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: April 27, 2004