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JULY 30, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: February 25, 2004

Case Number: TSO-0083

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted access authorization at this time.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor. In early 2002, the individual's employer requested that the individual be granted a DOE access authorization, and a background investigation revealed a potential concern to the DOE. The DOE conducted a Personnel Security Interview with the individual in June 2002 (the 2002 PSI). In addition, at the request of DOE security, the individual was evaluated in November 2002 by a DOE-consultant psychiatrist (hereafter "the DOE psychiatrist"), who issued a letter containing his findings and recommendations. In November 2003, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager stated that the individual's behavior has raised security concerns under Sections 710.8(j) and (l) of the regulations governing eligibility for access to classified material. With respect to Criterion (j), the Manager finds that the individual was diagnosed by the DOE-consultant psychiatrist as suffering from Alcohol Abuse without adequate evidence of rehabilitation or reformation. The Notification Letter also refers to the individual's arrests for Driving While Intoxicated (DWI) in

1987 and 1993 with respective Blood Alcohol Content (BAC) measurements of .22% and .17/.16%. The Notification Letter then summarizes other statements made by the individual at the PSI that raise a Subpart j concern, including (i) that following his 1993 DWI, an alcohol abuse counselor told him that he was alcoholic and needed help; (ii) that he feels he deserves a beer by Friday if he doesn't drink during the week; and (iii) that he estimated his monthly alcohol consumption as averaging 90 drinks.

Finally, with respect to Criterion (1), the Manager cites certain information as indicating that the individual engaged in unusual conduct tending to show he is not honest, reliable or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress. Specifically, the Manager refers to the individual's two alcohol related arrests in 1987 and 1993.

The individual requested a hearing to respond to the concerns raised in the Notification Letter. In his response to the Notification Letter, the individual admitted the two DWI's and the statements listed as points of concern in the Notification Letter, but denied that he met the DSM-IV criteria for alcohol abuse. He also asserted that he substantially reduced his alcohol consumption following the PSI and prior to receiving the Notification Letter. The requested hearing in this matter was convened in May 2004 (hereinafter the "Hearing"), and the testimony focused chiefly on the concerns raised by the individual's past pattern of alcohol consumption, and on the individual's efforts to mitigate those concerns through abstinence from alcohol and recovery activities.

## II. *REGULATORY STANDARD*

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b), (c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one 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 the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming

forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

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

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

*III. HEARING TESTIMONY*

At the Hearing, testimony was received from six persons. The DOE presented the testimony of a personnel security specialist and the DOE-consultant psychiatrist. The individual, who was represented by counsel, testified and presented the testimony of the director of the his alcohol recovery program (the alcohol treatment counselor), a long time friend, the project leader where he is employed, and the individual's wife. 1/

*A. The Personnel Security Specialist*

The DOE personnel security specialist explained that the DOE's criterion (j) and criterion (l) concerns were based solely on the individual's use of alcohol. She stated that if the individual successfully mitigated the DOE's criterion (j) concerns regarding his diagnosis of alcohol abuse, he would also mitigate its

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1/ As indicated by the resume and testimony of the DOE-consultant psychiatrist (DOE Exhibit 1 and TR at 38-39) and by the testimony of the alcohol treatment counselor (TR at 22-24), both of these medical professionals have extensive clinical experience in diagnosing and treating alcohol related illnesses. They clearly qualified as expert witnesses in that area.

criterion (1) concerns regarding his honesty, reliability and trustworthiness. Hearing Transcript (TR) at 21.

*B. The DOE-consultant Psychiatrist*

The DOE-consultant Psychiatrist testified that in November 2002 he interviewed the individual and administered laboratory and written tests. He stated that the material that he had been given by the DOE concerning the individual showed some "pretty significant" alcohol problems in his history, and that he confirmed this material when he interviewed the individual. In particular, he testified that the fact that the individual began drinking pretty heavily at a young age, the ninth grade, was a significant prognostic factor as far as developing alcohol problems in later life. He also noted that the individual's 1987 DWI showed a very high blood alcohol level of .22 which is a negative factor regarding maintenance of sobriety or whether a person will have recurrent DWIs. The individual also told him that he had experienced alcohol induced blackouts during his periods of heaviest drinking, and that he had developed tolerance for alcohol. He stated that his second DWI blood alcohol level of .16/.17 also was at a very high level. TR at 79-83.

In making his 2002 diagnosis of alcohol abuse, the DOE-consultant Psychiatrist stated that he relied on this history and on the individual's description of this current level of alcohol use. He noted that the individual's description of his current heavy drinking was supported by the results of a liver enzyme test.

His borderline elevated gamma GT liver enzyme level was also evidence to me that he was, indeed, as he said, drinking quite a bit of alcohol still. It was 40, which is the -- just at the cut-off of normal.

TR at 85. The DOE-consultant Psychiatrist admitted that the individual did not "technically fit" the DSM-IV criteria for alcohol abuse, which require that alcohol related problems must recur within a twelve month period. Nevertheless, he made a diagnosis of alcohol abuse based on his finding that the individual had clinically significant impairment. TR at 90.

In his 2002 report, the DOE-consultant Psychiatrist found that the individual was not rehabilitated, based on his statements that he was still drinking and had not engaged in recovery activities. The DOE-consultant Psychiatrist stated in his report that adequate

evidence of rehabilitation or reformation would consist of outpatient treatment of moderate intensity and abstinence from alcohol for a period of one year. On the issue of whether the individual could resume drinking after one year, the DOE-consultant Psychiatrist noted that some people who had recovered from alcohol abuse might be able to resume social drinking. However, he had earlier testified that the individual had developed tolerance to the effects of alcohol (TR at 82) and concluded that a resumption of social drinking for someone in that category carried an unacceptable level of risk for future problems.

No one in the substance abuse field, though, would argue that once a person has developed tolerance or withdrawal to the effects of alcohol that they would be a safe candidate to attempt to resume social drinking without a real high risk of relapse into the serious problems that they had before.

TR at 95, see also TR at 107. After listening to the testimony of the individual's alcohol treatment counselor, the DOE-consultant Psychiatrist stated that the individual's recovery program was "equal to or better than what I recommended in my report." TR at 96. He stated that the individual's recent liver enzyme GGT test level of 25 was good news in that it showed that the individual is maintaining his sobriety and committed to his program. TR 96. He added that the individual's ability to significantly reduce his GGT level through his sobriety confirmed that the earlier reading of 40 was due to excessive consumption of alcohol. TR at 96-97.

He stated that his recommendation of a one year period of sobriety was based on studies concerning the frequency of relapse.

So that first year is statistically a time where people are trying to be sober, the people that are going to drop off will drop off of their sobriety during that first year. So statistically if a person has maintained his sobriety after a year, they are getting out into the flat end of the curve where there is going to be much less likely a chance that they are going to relapse subsequently.

TR at 106. Finally, after hearing testimony that the individual had abstained from alcohol since February 19, 2004 and was actively engaged in his recovery program, the DOE-consultant Psychiatrist stated that

I would still recommend . . . a one-year treatment program beginning from his date of sobriety, I guess, which is most likely February 19th.

TR at 142.

*C. The Alcohol Treatment Counselor*

The alcohol treatment counselor testified that he is the director and a therapist for a recovery program organization for persons with substance abuse problems. He recalled that in 1993, the individual had participated in a court-ordered alcohol program at his organization, and he had expressed concerns to the individual about his use of alcohol. TR at 24. He stated that the individual had returned to his organization on January 23, 2004 to discuss entering an alcohol treatment program.

I sensed from [the individual] that there was more of an openness to maybe eliminating this problem from his life. Despite him being functional in certain areas, I think he was starting to see that the costs were getting too high and that -- you know, like he had disclosed to the psychiatrist, that maybe 90 drinks a month was too much at this point for a lot of different reasons. . .

TR at 25. He stated that the individual then enrolled in a program of weekly counseling at his organization, and since he disclosed that the DOE-consultant Psychiatrist had assessed him as suffering from alcohol abuse, the Alcohol Treatment Counselor did not do a formal evaluation of the individual at that point. He testified that the individual's admission to the DOE-consultant Psychiatrist that he was drinking ninety drinks a month would certainly support a diagnosis of alcohol abuse. He added that he was not

in the position to rediagnose or dispute or debate the doctor's diagnosis. I was more to provide the treatment [the individual] was requesting based on what they were requiring.

TR at 34.

With regard to the individual's recovery, the Alcohol Treatment Counselor stated that the individual has attended 16 out of 16 sessions and that his alcohol treatment counselor has documented that he participates openly and that he is developing skills as far

as social support, dealing with cravings, refusal skills, mood management and developing sober activities more conducive to his new way of life.

The Alcohol Treatment Counselor testified that he recently had a follow-up session with the individual, and was impressed by his progress.

I was pleasantly surprised to hear the change in his outlook and in his overall attitude regarding this process, and I really felt like [the individual] is really starting to see beyond the external reasons for staying sober, that he's internalizing and discovering that desire and recognizing the benefits of not drinking, and that's important for me to see, especially after four months.

TR at 27-28. He testified that the individual's admitted drinking of one glass of wine on a couple occasions shortly after beginning the program was not atypical. "It's pretty par for the course that someone is going to have some early-stage struggles." TR at 38. He stated that all the indicators and the signs are that the individual is staying abstinent, and that he's internalizing the recovery process. TR at 29. With regard to time, the Alcohol Treatment Counselor supported the DOE-consultant Psychiatrist's recommendation of one year of treatment for rehabilitation as "a good amount of time" to indicate whether the individual will solidify his goals and maintain his sobriety. TR at 34. He also testified that he did not regard the individual as a candidate to resume drinking in moderation, stating that

the chances of him returning and progressing back to where he was are very high. In his case, I would recommend continued abstinence beyond our program.

TR at 41.

#### D. *The Individual*

The individual, who is in his early forties, testified that in the late 1970's and through the 1980's he was involved in a "rock-and-roll band scene" that was coupled with heavy drinking. He stated that since 1990, he has purchased a house, gotten married, gone back to school for a professional certificate, and launched a successful career with a DOE contractor. TR at 125. He testified that his heavy drinking became centered at home because he no

longer went out "carousing with my friends" and because he did not want to get another DWI. TR at 126. He testified that following his June 2002 PSI, he "started to think that maybe my drinking habits were more of a problem than I thought," and started cutting back prior to his November 2002 interview with the DOE-consultant Psychiatrist. TR at 127. He stated that in the year following that interview, he really cut back on his drinking. After the DOE issued the Notification Letter in November 2003,

again, I cut back on my drinking, and finally I entered the counseling, and there was a couple of times I had wine with dinner, but after that, I've really made big improvements where I don't feel like I am dependent on alcohol or crave it or the triggers that make me want to drink or anything like that.

TR at 128. He stated that he reported his early lapses to his alcohol counselor "because I wanted the counseling to work." The individual testified that these lapses definitely occurred on or before February 19, 2004. TR at 131. He states that he has maintained his abstinence since then. TR at 135.

Although the individual initially objected to the DOE-consultant Psychiatrist's report and diagnosis of him, his attitude has evolved. His current assessment of the report is that

There is a lot more truth to it. I will admit that I was drinking too much, that a six-pack is too much, and that there was a lot of room for improvement, and today I'm grateful for the improvement that I've made.

TR at 134. The individual also stated that he is happy with his treatment program. He feels that he has broken his drinking habit and is a healthier and happier person today because of it. TR at 139-140.

The individual believes that he will continue to remain abstinent for one full year in order to complete the DOE-consultant Psychiatrist's recommendation for rehabilitation. At this point, however, he hopes to one day return to social drinking.

You know, if [the DOE] wants two years of abstinence, I'll do that, but I'm hoping that sometime in the future I can have a glass of wine with dinner, and I'm hoping that maybe on a weekend I can have one or two beers, and

I'm -- at this point, I'm not worried about relapsing and having to have a six pack.

TR at 138-39.

*E. The Individual's Wife*

The individual's wife testified that she has known the individual for six or seven years and that they married in 2000. She stated that in the years since their marriage, their main activities have been their jobs, her husband's academic work for his professional certificate, and house and yard maintenance. She states that in the last two years, her husband has learned to ride a motorcycle so that they can go up to the mountains on weekends. She emphasized that they never consumed alcohol while motorcycling. TR at 63-65 and 69. She testified that in the last few years the individual has attempted to reduce his alcohol consumption with some success, but that she believes that the alcohol treatment program has been "extremely good" for him. TR at 65 and 68.

She testified that, other than the lapses described above, she has not observed the individual consume alcohol since he entered his treatment program in January 2004. TR at 69 and 74-45. She stated that she consumes moderate amounts of alcohol in the individual's presence, and that there is beer, wine and liquor in their home. She stated that he has not used this alcohol. TR at 71. She testified that she feels "very, very positive" about her husband's prognosis because he loves his job and he does not want the issue of alcohol abuse to get in the way. TR at 72.

*F. The Long-Time Friend*

The long-time friend testified that he has known the individual for twenty-three years. He stated that the individual today is far more conservative and focused today than he was twenty-three years ago. He stated that this process of change began ten or twelve years ago, and that the individual's marriage was the most significant change in the individual's life. He testified that he now sees the individual about eight or ten times a year. He last saw the individual consume alcohol in the summer of 2003. TR at 51. He testified that he hosted a Super Bowl party in early February 2004 which the individual attended, and that he did not see the individual consume alcohol at the party. He stated that he visited the individual's home about three or four weeks before the Hearing, and that he did not observe the individual consume alcohol on that occasion. TR at 50 and 54. He regards the individual as

a person of very high integrity, a very trustworthy person, and a very good friend. TR at 49.

*G. The Individual's Project Leader*

The Individual's Project Leader testified that the individual is a student trainee who has worked with her for a couple of years. She stated that he is a good employee who would definitely remain employed by her if he can resolve his security clearance issue. She stated that she has never observed him to be drunk or hung over while at work, or to have any alcohol related tardiness. TR at 58.

IV. ANALYSIS

*A. Criterion (j) Concerns*

The individual and his counsel presented four arguments for the purpose of mitigating the security concern. The first is an assertion that the DOE-consultant Psychiatrist did not follow the DSM-IV Criteria in arriving at a diagnosis of alcohol abuse and that the diagnosis is therefore erroneous. The second contention is that the individual has had no DWIs in eleven years and reduced his alcohol consumption following the 2002 PSI, so that a diagnosis of alcohol abuse, even if it was once accurate, is no longer applicable. The third contention is that because the individual has been actively engaged in a treatment program since January 23, 2004, has been alcohol abstinent since February 19, 2004, and has committed himself to abstinence for a full year as directed by the DOE-consultant psychiatrist, the individual is rehabilitated and can be relied upon not to abuse alcohol in the future. The fourth argument is that the individual strongly desires to pursue a career path with his current employer and will not do anything to jeopardize his position with his employer, including abusing alcohol. For the reasons stated below, I conclude that these arguments do not fully resolve the security concern.

*1. Alleged Errors in the DOE-consultant Psychiatrist's Diagnosis of Alcohol Abuse*

In his Supplemental Response to the Notification Letter, the individual's counsel argues that the DOE-consultant psychiatrist did not follow the DSM-IV criteria in arriving at a diagnosis of alcohol abuse. He notes that DSM-IV criteria 2 and 3 for alcohol abuse both require recurrent alcohol use problems or recurrent alcohol-related legal problems that must occur within a twelve-

month period. Since the individual's diagnosis for these criteria was based on DWIs that occurred in 1987 and 1993, the individual's counsel argues that the diagnosis is flawed. He contends that while the DSM-IV specifically gives a medical professional some license to make a diagnosis based on a clinical presentation that "falls just short" of meeting the full criteria for the diagnosis, it should not be read to permit a diagnosis of alcohol abuse based on two DWIs that were six years apart. Supplemental Response to Notification Letter at 7-10.

I do not agree. Although the individual did not fit the strict DSM-IV criteria, the DOE-consultant Psychiatrist made a proper diagnosis based on his clinical judgment. In previous cases, the DOE has accepted a diagnosis based on psychiatric evaluation, diagnostic impressions and other tests when an individual did not meet the specific DSM-IV criteria. See *Personnel Security Review, Case No. VSA-0298*, 28 DOE ¶ 83,001 (2000). The DOE-consultant Psychiatrist testified at the Hearing that even though the individual did not strictly meet all of the criteria for alcohol abuse, in his professional judgment the diagnosis was still accurate. As noted above, he found that the individual's early history of heavy alcohol use was a significant prognostic factor for alcohol problems, as was his experiencing of alcohol induced blackouts during his periods of heaviest drinking. He testified that the individual's admitted development of tolerance to the effects of alcohol was a criterion for the diagnosis of alcohol dependence, a more serious condition than alcohol abuse. TR at 84. He further noted that the individual's 1987 and 1993 DWIs both showed a very high blood alcohol level which is a negative factor regarding maintenance of sobriety or whether a person will have recurrent DWIs. In this regard, he noted that studies have shown that for each DWI arrest, there are likely to be 100 occasions where the driver has operated his vehicle while intoxicated without being arrested. TR at 89. He found that the individual's description of his heavy drinking in 2002 was supported by GGT liver enzyme level of 40, which is at the very upper level of the normal range. 2/ He concluded that these findings supported a diagnosis of alcohol abuse based on his finding that the individual had clinically significant impairment. TR at 90.

During his testimony, the individual's Alcohol Treatment Counselor indicated that he essentially agreed with the DOE-consultant Psychiatrist's diagnosis of alcohol abuse. TR at 34.

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2/ In his regard, I find that the individual's May 2004 GGT test, taken after three months of sobriety and indicating a GGT level of 25, supports the DOE-consultant Psychiatrist's conclusion that the high reading on the November 2002 test was due to excessive drinking.

Accordingly, for the reasons given above, and in the absence of expert evidence refuting the diagnosis of alcohol abuse, I find the DOE-consultant Psychiatrist's diagnosis that the individual suffers from alcohol abuse to be clearly within his professional discretion.

## 2. *Seriousness of the Individual's Recent Alcohol Problem*

The individual's counsel asserts that the DOE's security concern about alcohol abuse should be mitigated by the passage of time. He points out that the individual's DWI's occurred in 1987 and 1993, and that he has experienced no legal problems since then. He presented evidence that the individual currently is considered a good worker by his employer and has successfully completed a professional certificate program. Supplemental Response to Notification Letter at 2. He also presented the testimony of the individual and his wife that during the period from the June 2002 PSI until he entered a treatment program in January 2004, the individual substantially reduced his consumption of alcohol. I am not persuaded that these assertions alter or mitigate the diagnosis of alcohol abuse. I accept the diagnosis of the DOE-consultant Psychiatrist, which is based on the individual's entire history of alcohol use through November 2002. The record indicates that as late as at his June 2002 PSI, the individual estimated his alcohol consumption at about ninety drinks a month. Both the DOE-consultant Psychiatrist and the Alcohol Treatment Counselor testified that this individual should demonstrate a full year of abstinence and involvement in a recovery program to bring his risk of relapse to an acceptable level. In addition, the individual has admitted to a couple of lapses in his recovery program that occurred on or before February 19, 2004. Accordingly, I am not convinced that the individual has shown that his abuse of alcohol in recent years is a less serious problem that can be mitigated by only three months of sobriety.

## 3. *Rehabilitation*

The individual did not present convincing evidence that his rehabilitation was complete at the time of the Hearing in May 2004. The evidence establishes that at that time, individual had been actively engaged in a recovery program for four months. The evidence also establishes that he is making good progress in this program. In addition, I find that the individual has been abstinent from alcohol since February 19, 2004, a period of three months at the time of the Hearing. <sup>3/</sup> However, both the DOE-

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<sup>3/</sup> This finding is supported by the testimony of the individual, his wife, his Alcohol Treatment Counselor, and his long-time friend. In addition, his May 2004 GGT test results are consistent with a substantial reduction or  
(continued...)

consultant Psychiatrist and the Alcohol Treatment Counselor testified that while the individual is currently in remission from alcohol abuse, he must establish a one year period of abstinence and recovery activity to be considered rehabilitated. On the basis of the individual's limited period of sobriety and recovery activity, I find that the individual has failed to demonstrate rehabilitation from alcohol abuse at this time.

In addition, I am concerned that although the individual states that he fully accepts the medical recommendations that he abstain from alcohol for one year to establish rehabilitation, he has expressed the desire to resume moderate drinking once his rehabilitation activities have ended. Since both the DOE-consultant Psychiatrist and the Alcohol Treatment Counselor have testified that he is at a high risk to develop future alcohol-related problems if he resumes drinking, it appears that the individual's intention at the time of the Hearing to eventually resume consuming alcohol may pose an unacceptable level of risk to the DOE.

#### 4. *Motivation to Avoid Abusing Alcohol*

Finally, the individual and his wife both assert that the individual places a great value on his employment with his DOE contractor and therefore can be trusted not to jeopardize that employment by abusing alcohol in the future. These assertions do not mitigate the DOE's concerns. As the testimony of the DOE-consultant Psychiatrist and the Alcohol Treatment Counselor make clear, alcohol abuse is an insidious problem that is not always susceptible to an individual's conscious control. As the alcohol treatment professionals explained at the hearing, a year of sobriety and recovery are necessary to provide the individual with experience and skills to successfully maintain his sobriety and avoid abusing alcohol in the future.

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3/(...continued)

elimination of his alcohol consumption.

*B. Criterion (1) Concerns*

With respect to Criterion (1), the Notification Letter finds that information in its possession indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. In this regard, the Notification Letter refers to the individual's alcohol related arrests in 1987 and 1993.

The cited DWI arrests are clearly the result of the individual's alcohol abuse, and are not the type of unusual behavior that is properly raised as an independent security concern in this case. As discussed above, the individual is currently abstaining from alcohol and is actively pursuing a recovery program. However, he has not yet maintained his abstinence long enough to demonstrate rehabilitation from his diagnosis of alcohol abuse. I therefore find that the Notification Letter's Criterion (1) concerns are part of the Criterion (j) concern of alcohol abuse which the individual has not yet mitigated. If the DOE eventually were to resolve the Criterion (j) security concern in the individual's favor, it would be appropriate to reinstate the individual's access authorization.

*V. CONCLUSION*

For the reasons set forth above, I find that the individual suffers from alcohol abuse subject to Criterion (j). Further, I find that this derogatory information under Criterion (j) has not been mitigated by sufficient evidence of rehabilitation or reformation at this time. Accordingly, after considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not yet demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the

individual should not be granted access authorization. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: July 30, 2004