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DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0084

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

In November 2003, the Manager of the Personnel Security Division, National Nuclear Security Administration (NNSA), Department of Energy (DOE) issued a Notification Letter to the individual, stating that the DOE was in possession of derogatory information that created a substantial doubt concerning his continued eligibility for access authorization. In the Notification Letter, the Manager also informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the Notification Letter. The individual requested a hearing in this matter and the NNSA forwarded this request to the Office of Hearings and Appeals. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (hearing).

The Notification Letter finds security concerns related to the individual's behavior under Criteria H & J. 10 C.F.R. § 710.8(h) & (j). Criterion H security concerns relate to a finding of a mental condition, which, in the opinion of a psychiatrist causes or may cause a significant defect in judgment. Criterion J security concerns relate to the use of alcohol habitually to excess or a diagnosis of alcohol abuse or dependence.

The Notification Letter bases the security concerns on a December 7, 2002, report by a DOE consulting psychiatrist. In that report the consulting psychiatrist diagnosed the individual as

suffering from alcohol dependence. She also found that the individual was suffering from dysthymic disorder. The report finds that the individual's alcohol dependence and dysthymic disorder may cause a significant defect in his judgment.

## 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, once a security concern has been raised, 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 their eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (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. Once a security concern has been raised, 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 her 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. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations 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 an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected 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).

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

In a personnel security case 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 of access authorization would not endanger the common defense and security and would be 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. BACKGROUND

The record in this case indicates that during January 2002 the individual and his wife entered into marriage counseling. After several sessions the counselor told the couple that he believed the problems in their marriage were related to the individual's excessive use of alcohol. The individual then began individual sessions with the counselor. Within a few weeks the individual decided that he should reduce his consumption of alcohol. However, he found that he was unable to accomplish this goal. Following additional sessions with his counselor and discussions with his wife the individual came to the conclusion that he needed professional help in order to stop consuming alcohol. In June 2002 he admitted himself into a five day inpatient detoxification program. After completing that program he immediately entered a 30 day inpatient treatment program. The individual completed the treatment program in July 2002. Transcript of Personnel Security Hearing (Tr.) at 53.

On November 27, 2002, the individual was interviewed by a DOE consulting psychiatrist. Her report, dated December 7, 2002, diagnosed the individual as suffering from dysthymia and alcohol abuse. The individual has indicated on a number of occasions that he agrees with the diagnosis of the DOE consulting psychiatrist. Tr. at 74. At the hearing the individual presented testimony that he believes demonstrates he has not consumed alcohol since June 2002 as well as testimony from his counselor and the DOE consulting psychiatrist which indicate they believe he is rehabilitated.

### IV. TESTIMONY

#### 1. The DOE Consulting Psychiatrist

The DOE consulting psychiatrist's testimony was received in two parts. Prior to hearing the individual and the witnesses, she testified about her interview and her evaluation of the individual. She testified that the individual was direct and honest during his interview. Tr. at 17. On the basis of the detailed history provided by the individual and the information in the individual's security file, the DOE consulting psychiatrist diagnosed the individual with mild depression (dysthymia) and alcohol abuse. Tr. at 22. Because the individual admitted himself into treatment before any legal or occupational difficulties occurred and he was compliant in his treatment, the consulting psychiatrist believed at the time of his evaluation that one year of abstinence would indicate rehabilitation. Tr. at 24. She concluded this testimony by indicating that at the time of the evaluation, the individual's dysthymia was in remission and the only reason dysthymia was a concern was that it triggered the consumption of alcohol. Tr. at 25.

After listening to all the testimony, including that of the individual himself, the DOE consulting psychiatrist gave some additional testimony. She stated "I am very impressed as to how he has continued his recovery." Tr. at 139. She indicated that she was pleased to hear that the individual has internalized a number of reasons for maintaining his sobriety. Tr. at 140. She indicated that she believes there is a low probability that the individual will relapse. Tr. at 140.

## 2. The Individual's Wife

The individual's wife testified that they have been married for eight years. At the beginning of 2002 she and her husband entered into marriage counseling. Tr. at 37. The marriage problems were related to the individual's consumption of alcohol. Tr. at 38. She testified that for several months the individual attempted unsuccessfully to stop consuming alcohol. His wife believes that the individual realized that he might lose his wife and child if he did not get professional help in order to stop consuming alcohol. Tr. at 39. This led him to admit himself to a five day detoxification program and a thirty-day inpatient treatment program. Tr. at 40. She indicated at that time of his treatment in June 2002 he was very relieved and was very happy to be getting help with his problem. Tr. at 40.

She testified that she has been with the individual almost every night since July 2002 and that she has never seen him consume alcohol or had any reason to believe he has consumed any alcohol. Tr. at 43. When they attend at parties or extended family gatherings at which alcohol is served, the individual has no problem maintaining his abstinence. Tr. at 44. Further, she indicated their extended families are very supportive of the individual's sobriety and are proud of his efforts to maintain that sobriety. Tr. at 44. Finally, she testified that the individual is committed to sobriety and to his family. Tr. at 45.

## 3. The Counselor

The counselor testified that he was closely involved with the individual during 2002 when he admitted himself for detoxification and inpatient treatment and was reorganizing his life. Tr. at 54. He testified that in 2002 the changes in the individual were significant. He stated:

. . . the changes in [the individual's] level of function were rather remarkable. His clarity of thought, his ability to take ownership of not only the alcohol dependence but of interpersonal issues, his affect, his mood, I think all represented not only sobriety, but a more generalized, sophistication in his level of function, his awareness, his insight.

Tr. at 54.

After the completion of the inpatient program the counselor saw the individual on a weekly basis. Over time the frequency has been reduced and he is currently seeing the individual once every two months. Tr. at 53. The counselor believes the individual is a compliant patient who has not consumed any alcohol in the last two years. Tr. at 55.

After hearing the testimony of the other witnesses at the hearing the individual's counselor indicated that he thought the probability of a relapse in the individual's case was low and that the individual's prognosis is excellent. Tr. at 141. He indicated that he thought the "consistency, the breadth and depth" of the testimony validates the testimony of the individual and his wife and his own observations during treatment. Tr. at 141. He concluded by saying that "I don't know of a situation wherein the various facets from support groups to effective treatment to commitment that all of those facets are so well addressed with such a positive flavor as in this case." Tr. at 142.

#### 4. Chief Psychologist

The chief psychologist testified that he is employed as the DOE chief psychologist with the Occupational Medical Department at the DOE site. Tr. at 62. The chief psychologist's primary duties relate to the personnel security assurance program (PSAP). He testified that as a result of the individual's self reporting of his inpatient alcohol treatment and the Celexa he was prescribed for dysthymia, Tr. at 63, the chief psychologist met with the individual. 1/ That meeting occurred in July 2002 immediately following the individual's return to work after completing his two inpatient programs. During that meeting the chief psychologist determined that the individual had an alcohol abuse problem. Tr. at 65. He asked the individual to continue to see the counselor and to report any changes in his treatment. Tr. at 65. On the basis of the individual's statements that he would continue counseling, the chief psychologist cleared the individual to return to work at a job covered by the PSAP program. The chief psychologist saw the individual again in October 2002. At that time he found that the alcohol concern was resolved. Tr. at 65. His last meeting with the individual was for the individual's regularly scheduled annual review in April 2003. At that meeting he determined that the individual was continuing to do well and his mood and affect were appropriate. Tr. at 66. He testified that everything was good and he again cleared the individual to continue working under the PSAP program. Tr. at 66.

#### 5. The Individual

The individual testified about his marriage counseling, in-patient care, and his after care. He testified that he is at peace with himself and his marriage is much improved. Tr. at 85. He testified that he is currently taking Lexapro which has been prescribed for his dysthymia. 2/ Tr. at 86. He further testified that he is committed to total abstinence. Tr. at 90. He further testified that he has not consumed alcohol since he underwent inpatient treatment in June 2002.

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1/ The notes from the chief psychologist were not in the DOE security file. After discussions with his client, the individual's attorney called the chief psychologist as a witness.

2/ The Lexpro is prescribed by a psychiatrist that treated the individual during his detoxification program. He meets with that psychiatrist on a quarterly basis. Tr. at 87.

#### 6. Brother in Law

The brother in law testified that he has known the individual for eight years. Tr. at 91. He testified before June 2002 he and the individual often consumed alcohol together. However, he has not seen the individual consume alcohol in the last two years. Tr. at 92. He has seen the individual at sporting and family events where alcohol is being consumed. On those occasions, the individual had no problem maintaining his sobriety. Tr. at 93. He indicated he does not believe the individual has consumed any alcohol since June 2002. Tr. at 93.

#### 7. Neighbor

The individual's next door neighbor testified that he has been a neighbor for five years and he sees the individual daily during the summer and two or three times a week during the winter. He knows the individual and his wife very well. Tr. at 96. He indicated that he has been with the individual in many situations in which alcohol is being consumed and the individual seems quite comfortable not consuming alcohol. Tr. at 98. He indicated that he does not believe the individual has consumed alcohol in the last two years. Tr. at 99.

#### 8. Neighbor's Wife

The neighbor's wife testified that she knows the individual and his wife very well and that she believes the individual has not consumed alcohol in the last two years. Tr. at 103. She believes if the individual were to start consuming alcohol she would know. Tr. at 103. She also testified there is no alcohol in the individual's home and if there were she would know about it. Tr. at 103. Finally, she thinks that in the last two years she and her husband have gotten closer to the individual and his wife and that the individual is much happier since he has ceased consuming alcohol. Tr. At 105.

#### 9. Second Brother in Law

The second brother in law testified that he has known the individual since 1990. Tr. at 109. He sees the individual monthly, and during the holiday season he sees him even more frequently. Tr. at 111. He testified that the family is proud of the individual for seeking help to stop consuming alcohol. Tr. at 112. He has seen the individual in many situations in which alcohol is served and the individual has not consumed alcohol. Tr. at 112. He testified that the individual takes his sobriety very seriously. Tr. at 112.

#### 10. The Individual's Mother

The individual's mother testified that prior to June 2002 she knew the individual had some marital problems but that in early 2002 she learned the individual's problems were related to his alcohol use. Tr. at 118. She testified that the individual tried to stop drinking a couple of times in early 2002 but was unsuccessful. Tr. at 119. She urged the individual to seek professional help. She visited the individual during his 5 day detoxification program, drove with him when he entered the 30 day

inpatient treatment program and talked to him on the phone during his 30 day inpatient treatment. Tr. at 121. Since July 2002 she has seen him once a week and has talked with him on the telephone several times a week. Tr. at 122. She testified that she has seen him in situations in which alcohol is being consumed and believes he has not consumed alcohol since June 2002. Tr. at 122.

#### 11. The Individual's Father

The individual's father testified that prior to his inpatient treatment the individual told him that he was seeking help with his drinking problem. Tr. at 126. He testified that the individual has not consumed alcohol in the last two years and that he has seen improvements in his son's life since he ceased the consumption of alcohol. Tr. at 127.

#### 12. Co-worker

The co-worker testified he has known the individual for five years. Tr. at 131. He testified that the individual is a reliable and good employee. Tr. at 132. He testified that the individual told him that he was seeking treatment for a problem with alcohol. Tr. at 132. He indicated that he has discussed the individual's alcohol problem and treatment on many occasions and believes the individual is taking the treatment very seriously. Tr. at 134.

#### 13. Previous Supervisor

His previous supervisor testified that the individual was a very competent employee. Tr. at 136. He also testified that he has on several occasions discussed with the individual the details of his treatment program. Tr. at 138.

#### 14. AA Member

A member of the individual's AA group wrote a letter dated March 15, 2004 and testified by telephone. The letter and her testimony indicated that the individual has been an active member of the group since August 2002. Tr. at 148. She testified that she has gotten to know the individual well and believes she would know if the individual has returned to alcohol consumption. Tr. at 150. She clearly believes he has not consumed alcohol in the last two years. Tr. at 150.

### V. ANALYSIS

The witnesses persuaded me that the individual has been abstinent since July 2002 and is committed to abstinence in the future. In this regard, I am convinced by the testimony of the individual, his wife, his neighbors and family that the individual has not consumed alcohol since June 2002. I found the testimony of the AA member to be very convincing that the individual is committed to his sobriety. The testimony of the individual's counselor and his wife clearly indicated that the individual has voluntarily recognized his problem and has developed a life style based on abstinence. I also found compelling and believable the individual's own testimony about how he came to realize

that alcohol was creating a problem for him that required important behavioral changes that were described in detail in the testimony I received.

The expert witnesses were impressed by the individual's commitment to his rehabilitation program. I found the DOE consulting psychiatrist's opinion that the individual is rehabilitated to be convincing. I was also convinced that the counselor's evaluation that the individual was unlikely to relapse was based on a detailed knowledge of the individual's behavior and attitudes. Finally, the chief psychologist's testimony that as of April 2003 the individual had dealt effectively with his alcohol problem supports the conclusions of the DOE consulting psychiatrist and the counselor.

This case is one in which the credibility of witness testimony plays a critical role in my determination. As is evident from the above summaries, the witnesses, without exception, were all favorable to the individual. The changes in the individual's attitudes and behavior related to alcohol are clear and positive, and I have therefore determined that the individual has mitigated the DOE criterion J security concern relating to alcohol abuse.

I am also convinced that the individual has mitigated the criterion H concern related to his dysthymia. The DOE consulting psychiatrist indicated the dysthymia was only a concern because it might have caused the individual to abuse alcohol. Since the individual has shown that he is unlikely to consume alcohol in the future, the dysthymia is no longer a security concern. In addition, the individual is clearly receiving the type of medication that would normally be considered sufficient to mitigate a security concern related to dysthymia.

## VI. CONCLUSION

I have concluded that the individual has mitigated the DOE security concern under Criteria J and H of 10 C.F.R. § 710.8. In view of the record before me, I am persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker  
Hearing Officer  
Office of Hearings and Appeals

Date: July 12, 2004