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July 23, 2002

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: March 6, 2002

Case Number: VSO-0529

This Decision concerns the eligibility of XXXXXXXX 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."^{1/} A Department of Energy Operations Office (DOE) suspended the individual's access authorization under the provisions of Part 710.^{2/} As set forth in this Decision, I have determined on the basis of the evidence and testimony presented in this proceeding that the individual's security clearance should not be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. 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

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

^{2/} On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication and govern the present Decision.

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).

In this instance, the individual was granted a security clearance by DOE as a condition of his employment with a DOE contractor. However, the DOE Office of Safeguards and Security (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on January 7, 2002, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h and j. More specifically, Attachment 1 to the Notification Letter (Attachment 1) alleges that the individual has: 1) "[a]n illness or mental condition of a nature which in the opinion of a psychiatrist, causes or may cause, a significant defect in judgment or reliability" (Criterion H); and 2) "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as alcohol dependent or as suffering from alcohol abuse" (Criterion J). The bases for these findings, as stated in Attachment 1, are summarized below.

Regarding Criteria H, Attachment 1 states that on July 24, 2001, the individual was examined by a DOE consultant psychiatrist (DOE Psychiatrist). In his report, dated August 28, 2001, the DOE Psychiatrist states his medical opinion that the individual meets the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)* criteria for a mental condition, Alcohol-Related Disorder, Not Otherwise Specified. The report states further that this mental condition causes a significant defect in the individual's judgment and reliability, as demonstrated by the individual's decision to continue to drink notwithstanding the difficulties he has had in the past with alcohol, and with the risk of jeopardizing his security clearance and livelihood.

With regard to Criterion J, Attachment 1 again notes the diagnosis of the DOE Psychiatrist, and additionally states that the individual has been arrested twice for Driving Under the Influence (DUI), in May 1985 and in December 1992. During a Personnel Security Interview (PSI) conducted with the individual on March 2, 1995, Attachment 1 states that the individual admitted that in February 1994, he was involved in a domestic violence incident in which he pushed and slapped his wife, after he drank to the point of intoxication. During the same PSI and a subsequent PSI conducted with the individual on July 3, 2001, the individual recounted past attempts to control his drinking by voluntarily entering into a treatment program and obtaining a prescription for Antabuse, which he took for six to eight months.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on March 6, 2002, the individual exercised his right under Part 710 to request a hearing in this

matter. 10 C.F.R. § 710.21(b). On March 8, 2002, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called a Personnel Security Specialist and the DOE Psychiatrist. Apart from testifying on his own behalf, the individual called a psychiatrist (Individual's Psychiatrist), his supervisor, a co-worker and two close friends. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "Exh.".

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was granted a DOE security clearance in 1984 as a condition of his employment with a DOE contractor. A periodic reinvestigation of the individual's eligibility to hold an access authorization uncovered certain derogatory information relating to the individual's use of alcohol. Upon receiving this updated information, a Personnel Security Interview (PSI) was conducted with the individual on July 3, 2001. The individual was then referred to a DOE Psychiatrist who examined the individual on July 24, 2001. Below is the pertinent history of the individual's use of alcohol as revealed during the PSI, psychiatric interview and record of this proceeding.

The individual began drinking at a relatively early age but his consumption of alcohol apparently did not become problematic until later in life. In May 1985, the individual was arrested on a charge of Driving Under the Influence (DUI), and during the 1989-90 time frame the individual's drinking became habitually excessive. At this time, the individual's mother was stricken with cancer and the individual was unable to cope with her illness. During the early 1990's, it was common for the individual to drink 10-12 beers per night. To further exacerbate the stress the individual was experiencing, the individual's father also began to have serious health problems. The individual's mother died in December 1992, and within two weeks of her passing the individual received a second DUI at which time the individual registered a blood alcohol level of .13. As a result of the December 1992 DUI, the individual was fined and placed on three years probation. In April 1993, the individual's father passed away.

During 1993, the individual began to drink hard liquor, usually scotch, and his level of alcohol abuse increased. At this time, the individual was married with one child. The individual's marriage deteriorated and there were at least two instances of domestic violence when the individual was admittedly intoxicated. The first reported

incident occurred in February 1994, when the individual reports that his wife depleted their bank account without his knowledge and then lied about it. Following a heated argument, the individual pushed and slapped his wife, and then dragged her down the hall after she fell over a child barrier. The second incident occurred in April 1994, when the individual states that his wife left their house late at night with their small child to visit another man with whom the individual believed she was having an affair. The individual confronted her at the man's house and then enraged he returned home, threw out her clothes and "trashed" a portion of the house. The individual's wife reported that he pushed her on this occasion and she obtained a restraining order against the individual.

Immediately following the second domestic incident, the individual recognized that his drinking was out of control and in April 1994, he voluntarily admitted himself into an alcohol treatment program administered by his health care provider. This program was officially twelve to fourteen weeks in duration. However, the individual continued to meet with members of the support group on a regular basis for nearly a year and a half, even though the health care provider no longer furnished a facilitator or meeting place. The individual remained abstinent throughout this period and for a period of time thereafter. The individual was separated from his wife during this time and in September 1996, their divorce became final.

In early 1997, the individual began to drink again, initially only in moderation, limited to two beers or a few glasses of wine. However, the individual's drinking again became problematic. Although the frequency of his drinking did not increase, he began to "binge" drink at times when he was angry or under stress. The individual reported that there were about fifteen times during the year when he bought a six-pack of beer or bottle of wine, sat in his living room and got "snookered." The individual's girlfriend voiced her concern when the individual drank excessively. Attempting to rectify his drinking, the individual briefly attended Alcoholics Anonymous (AA) and other group counseling, but did not find them helpful to meet his circumstances. The individual therefore made the decision in 1998, to acquire a prescription for Antabuse from his health care provider. Antabuse is a medication, usually taken in pill form, that causes severe physical reactions if alcohol is subsequently consumed. The individual states that he decided to go on Antabuse in order to afford him time to examine the way he was improperly using alcohol to relieve stress. The individual remained on Antabuse, and thus abstinent from alcohol, for six to nine months.

In 1999, the individual made the decision to resume drinking once again. The individual states this decision was prompted by his girlfriend who persuaded him that he should not remain on Antabuse indefinitely but learn to control his use of alcohol. According to the individual, his drinking was not a problem from the time that he resumed drinking in 1999 until his interview with the DOE Psychiatrist in July 2001. However, the individual reported to the DOE Psychiatrist that on four or five occasions

during the preceding year, he drank while at home to a point of intoxication that he felt he could not legally operate a motor vehicle. Later, during that interview, the individual stated that he realizes that he is becoming intoxicated when he would attempt to drink after his glass is already empty.

After receiving the Notification Letter in January 2002, the individual obtained another prescription for Antabuse and resumed taking the medication. The individual has been abstinent since that time. The individual maintains that he did not do so because he was unable to control his use of alcohol, but to assure DOE that he is willing to remain abstinent to retain his security clearance. The individual has also resumed weekly group counseling sessions.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A 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). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to 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). This standard implies that there is a strong presumption against the granting or restoring of 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).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. 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): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After

due deliberation, it is my determination that the individual's access authorization should not be restored since I am unable to conclude 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(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition/Alcohol Use

1. Derogatory Information

In his report to DOE, the DOE Psychiatrist diagnosed the individual with Alcohol-Related Disorder, Not Otherwise Specified (NOS) under criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*.^{3/} In explaining his diagnosis, the DOE Psychiatrist states in his report: “[The individual] does have a history of alcohol abuse, and there have been some remissions from this. . . . [The individual] continues to use alcohol despite a history of problems affecting his dealings with others, and having had problems with the law. He also continued to drink notwithstanding the risk of jeopardizing his security clearance. [The individual] is particularly vulnerable to decompensations with alcohol. In the past, when faced with stressors, his drinking has materially increased.” Exh. 10 at 6-7. The DOE Psychiatrist further opined that the individual “has a significant defect in judgment by continuing to drink notwithstanding the difficulties he has had in the past.” *Id.* at 7. These past difficulties include two arrests for DUI, in 1985 and 1992, incidents of domestic violence in 1994, and the individual resorting to Antabuse in 1998-99 to control his binge drinking.

The DOE Psychiatrist further elaborated at the hearing that at the time the individual sought treatment in 1994, he clearly met the DSM-IV criteria for Alcohol Abuse. Tr. at 58. The DOE Psychiatrist believes that the individual “achieved rehabilitation and reformation at least to an extent” during the nearly three-year period, from 1994 to 1997, when the individual underwent group counseling and remained abstinent. Tr. at 60. However, the DOE Psychiatrist observed that upon resuming drinking in 1997, the individual relapsed into habitual binge drinking when under stress, leading the individual to resort to Antabuse in 1998. Tr. at 190. Thus the DOE Psychiatrist explained that the individual's decision to resume drinking in 1999 reflected poor judgment: “It's like having developed allergic reactions to a certain substance. And subsequently, common sense and logic dictate that you don't expose yourself to that substance anymore. And in the case of [the individual], he is putting himself at risk by getting exposed to a substance that has caused him problems in the past.” Tr. at

^{3/} *DSM-IV* states that the Alcohol-Related Disorder NOS category is for disorders associated with the use of alcohol that are not classifiable as Alcohol Dependence, Alcohol Abuse, Alcohol Intoxication, Alcohol Withdrawal, etc. *DSM-IV* at 204; Exh. K.

60-61. In the view of the DOE Psychiatrist, the individual “went back to drinking, knowing full well that this will trigger or cause a relapse into a more severe form of alcohol-related disorders such as alcohol dependence or alcohol abuse.” Tr. at 41.

The DOE Psychiatrist commended the individual for his decision to resume abstinence^{4/} and group counseling sessions in January 2002. On the basis of this revelation at the hearing, the DOE Psychiatrist modified his diagnosis of the individual to Alcohol-Related Disorder NOS, in Partial Remission. Tr. at 187. The DOE Psychiatrist clarified, however, that the individual must achieve a full year of abstinence in order to be considered in full remission from this mental condition. Tr. at 188, 202-03. The DOE Psychiatrist was thus adamant that the individual still has a mental condition at this time which causes a significant defect in his judgment and reliability, Tr. at 188, and there remains a substantial risk that the individual would relapse into excessive use of alcohol at times of high stress were he to resume drinking. Tr. at 63, 199-200.^{5/}

On the basis of the report and testimony of the DOE Psychiatrist and the individual’s history of alcohol abuse, I find that DOE Security properly invoked Criteria H and J in suspending the individual’s security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff’d*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In the present case, the Personnel Security Specialist expressed the concerns of DOE Security during her testimony, observing that the individual’s excessive use of alcohol might impair his judgment and reliability, and render him susceptible to pressure, coercion and duress. Tr. at 18-19. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation and reformation to mitigate the security concerns of DOE.

4/ The DOE Psychiatrist believes, however, that the individual’s decision to go back on Antabuse to guarantee abstinence went “above and beyond” what was necessary. Tr. at 192. Without elaborating, the DOE Psychiatrist cautioned that there may be adverse side effects associated with continued use of Antabuse. Tr. at 195.

5/ The DOE Psychiatrist observed: “[T]here are no predictions or guarantees when we are going to face stressors, when we are going to be faced with certain problems. And alcoholism is a disease characterized by exacerbations. And so again, I subscribe to the idea that individuals who have had a previous history of drinking to excess should not go back to drinking.” Tr. at 199-200.

2. Mitigating Evidence

The individual has presented considerable mitigating evidence in support of his continued eligibility to hold an access authorization. The cornerstone of this mitigating evidence is the report and testimony of another psychiatrist (Individual's Psychiatrist) who reviewed the report of the DOE Psychiatrist and conducted a one and one-half hour interview with the individual on April 9, 2002. In her report dated April 19, 2002, the Individual's Psychiatrist expresses the opinion that: "[The individual] does not have an alcohol related diagnosis at this time and is in no need to treatment. In fact, he shows extraordinary judgement regarding his alcohol use. . . . [The individual] has not experienced any alcohol related problems since 1994 and has never experienced any difficulties at work as a result of alcohol or any other personal problems. He understands that he is at risk of developing problems, and chooses to monitor his usage rather than abstain." Exh. A.

The Individual's Psychiatrist explained her opinion in great detail at the hearing. The Individual's Psychiatrist agrees with the DOE Psychiatrist that the individual suffered from Alcohol Abuse before entering treatment in 1994. Tr. at 70. However, their respective views diverge substantially beyond that point. Contrary to the DOE Psychiatrist, the Individual's Psychiatrist believes that the individual achieved rehabilitation and reformation during the three years, 1994-1997, when the individual underwent treatment and remained abstinent, Tr. at 103, and that the individual did not experience an actual relapse but acted responsibly in choosing to obtain a prescription for Antabuse in 1998 to address his perceived problem with binge drinking. Tr. at 89-90. The Individual's Psychiatrist believes that the individual demonstrated good judgment in taking Antabuse for six to nine months since this afforded the individual an opportunity to identify the problem, emotional stress, that caused him to indulge in binge drinking. Tr. at 68-69. In her view, the individual has "very good insight and very quickly realizes when his alcohol intake is either going over a certain moderate limit, or when his behavior changes in a detrimental way as a result of alcohol." Tr. at 69. Thus, the Individual's Psychiatrist is firmly of the opinion that the individual's decision to resume drinking in 1999 did not signify a defect in judgment as opined by the DOE Psychiatrist but simply a "relative weighing of the risks" by the individual. Tr. at 98. The Individual's Psychiatrist points out that the individual has had no reported alcohol incidents since 1994, and has maintained a reputation as an excellent employee on his job. Tr. at 72-73, 74.^{6/}

^{6/} The individual's supervisor and co-worker corroborated that the individual is a valued and trusted employee who has demonstrated sound judgment, and there have been no indications of excessive use of alcohol by the individual in the workplace. Tr. at 109-11, 115-16, 120. Two close friends of the individual further testified that he has not exhibited any signs of excessive alcohol use during their social interactions. Tr. at 126, 132-33.

It is clear, however, that the root of the conflict between the DOE Psychiatrist and Individual's Psychiatrist is that they subscribe to different schools of psychiatric thought. The Individual's Psychiatrist readily conceded that she does not agree with the prevailing view in the psychiatric community that a person, such as the individual, should not drink again once they have experienced a serious drinking problem in their life. Tr. at 70-71, 78. Although she admits that this approach, what she referred to as "American disease model," is the predominant view, she considers it to be "theory as opposed to fact" and a "catch-22" in which patients such as the individual, who decide to continue drinking, are diagnosed with having an alcohol problem on the basis of that decision. *Id.*^{7/} The DOE Psychiatrist similarly pointed out the difference in their respective positions: "There are two schools of thought in that regard, and obviously [the Individual's Psychiatrist] subscribes to the school of thought that an individual who has had problems with alcohol, like alcohol dependence or alcohol abuse, can safely return to drinking. And of course the opposing view of that is apparent. I believe that an individual who has had alcohol abuse or alcohol dependence, . . . wherein problems have come up with their school, with their jobs, or with their families, or problems with their physical health or problems with the law, I think individuals who fall into that category should not go back to drinking." Tr. at 198-99.

I have thoroughly considered the conflicting opinions of the psychiatrists in this case and I must defer to the opinion of the DOE Psychiatrist in this instance. There is no dispute that the individual had a serious problem of alcohol abuse during the years prior to 1994 when he had two DUIs and two reported incidents of domestic violence. While the individual underwent treatment and three years of abstinence, I find revealing his experience when he decided to resume drinking in 1997. Within one year, his drinking escalated to habitual binge drinking. After trying AA and group counseling to no avail, the individual resorted to Antabuse, which I consider an extreme measure to control one's drinking.^{8/} I note that this reemergence of excessive drinking occurred at a time when the high stress factors that ostensibly caused his previous period of alcoholism, specifically the deaths of his parents and a failing

7/ The Individual's Psychiatrist considers the American disease model to be "overly simplified," Tr. at 81, in that it places too much emphasis on biological factors and discounts psychological and social/cultural factors that are more pertinent in the development of alcohol problems in many individuals. Tr. at 78-79. In the present case, the Individual's Psychiatrist believes that the individual's alcohol difficulties resulted from his inability to manage emotional stress, but believes the individual now appears better equipped to handle those types of situations. Tr. at 99-100.

8/ While the Individual's Psychiatrist believes that the individual exercised good judgment in seeking Antabuse, she recognized that the individual's drinking had reached a severe stage at that point: "[T]hen when he began again, after about six months, apparently his drinking became out of control again." Tr. at 88-89.

marriage, were no longer present in his life. Thus, I share the view of the DOE Psychiatrist that the individual's decision to resume drinking in 1999 was ill-advised. Correspondingly, I find that the diagnosis of the DOE Psychiatrist that the individual has a mental condition, Alcohol-Related Disorder NOS, to be amply supported by the record of this case. While the DOE Psychiatrist now considers this mental condition to be in partial remission, he continues to believe that it causes a significant defect in the individual's judgment and reliability at this time. I therefore find that the individual has failed to sufficiently mitigate the concerns of DOE Security related to his mental condition and past use of alcohol.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the legitimate security concerns associated with these findings. I am therefore unable to find 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 have determined that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: July 23, 2002