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July 31, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 10, 2002
Case Number: VSO-0532

This Decision considers the eligibility of XXXXXXXXXXXXXXXX (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's access authorization should not be restored at this time.

I. *BACKGROUND*

The individual is an employee of a Department of Energy (DOE) contractor. The individual possessed a DOE access authorization for several years, but this clearance was suspended on November 27, 2001 pending the resolution of questions regarding the individual's eligibility for access authorization. DOE security personnel had conducted an interview with the individual in July 2001 (the 2001 PSI). In addition, at the request of DOE security, the individual was evaluated in October 2001 by a DOE-consultant psychiatrist (hereafter "the DOE psychiatrist"), who issued a Report containing his findings and recommendations on October 24, 2001 (the "Report"). In February 2002, the Director of Personnel Security of the Area Office (the Security Director) issued a Notification Letter to the individual. In this letter, the Security Director states that the individual has raised security concerns under Sections 710.8(j) and (l) of the regulations governing eligibility for access to classified material. Specifically, with respect to Criterion (j), the Security Director finds that the individual has been diagnosed by the DOE psychiatrist as suffering from Alcohol Abuse, and that this psychiatrist also has concluded that, as of

October 24, 2001, there was not adequate evidence of rehabilitation or reformation from this condition. In addition to the psychiatrist's findings, the Security Director bases the DOE's Criterion (j) concerns on the individual's two arrests for Driving While Intoxicated (DWI). These arrests occurred on May 11, 1986 and May 19, 2001.

With respect to Criterion (1), the Security Director finds that information in the possession of the DOE 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. In this regard, the Security Director refers to the individual's arrest on an alcohol-related charge in May 1986. He then finds that even though the individual was interviewed in 1987 and 1988 regarding DOE concerns with his use of alcohol, the individual continued to consume alcohol and was involved in another alcohol-related arrest in May 2001. The Security Director also finds that the individual continued to consume large amounts of alcohol even after the 2001 PSI, informing the DOE psychiatrist that he consumed a 12-pack of beer three days prior to his October 2001 evaluation. See Notification Letter, "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization".

The individual requested a hearing to respond to the concerns raised in the Notification Letter. In his response to the Notification Letter, the individual did not contest the DOE psychiatrist's conclusion that he suffered from alcohol abuse. Accordingly, the hearing convened on this matter 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 the testimony of expert medical witnesses and individuals who are knowledgeable concerning the individual's current efforts to maintain his sobriety. The hearing was convened in early June 2002, and testimony was received from thirteen persons. The DOE presented the testimony of a personnel security specialist and the DOE psychiatrist. The individual testified and presented the testimony of his wife, his brother, a long-time co-worker and friend, a long-time co-worker and travel associate, an out of town business associate, his DOE manager, a military associate, a current co-worker, an Employee Assistance Program (EAP) social worker who the individual sees regularly (the EAP

social worker), and a psychiatrist who examined the individual on three occasions (the individual's psychiatrist). 1/

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

1/ As indicated by the DOE psychiatrist's testimony at the Hearing (TR at 48-54) and by the resume of the individual's psychiatrist, both of these medical professionals have extensive clinical experience in diagnosing and treating alcohol related illnesses. They clearly qualified as expert medical witnesses in that area.

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. ANALYSIS

A. Criterion (j) Concerns

In his Report, the DOE psychiatrist found that the individual meets the criteria for Alcohol Abuse set forth in the "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition" (DSM-IV). Under direct and cross examination at the outset of the hearing, the DOE psychiatrist reiterated these findings and conclusions contained in his Report, and further discussed the bases for his diagnosis of Alcohol Abuse and his assessment of the individual's rehabilitation efforts. This diagnosis of Alcohol Abuse is not disputed by the individual or by the individual's psychiatrist. Hearing Transcript (TR) at 223, 120. Based on the DOE psychiatrist's Report and his testimony, and also on the written evaluation and testimony of the individual's psychiatrist, I find that the individual was properly diagnosed as suffering from Alcohol Abuse. The issue in this case is whether the individual has mitigated the concerns arising from this diagnosis by demonstrating rehabilitation or reformation. Accordingly, I will proceed to consider the nature of the individual's diagnosis of Alcohol Abuse, the recommendations for treatment, and the individual's response to those recommendations.

1. *The Individual's Diagnosis of Alcohol Abuse and Recommendations for Treatment*

The DOE psychiatrist based his diagnosis of Alcohol Abuse on the individual's admitted past behavior in connection with alcohol. Report at 2-6. 2/ He summarized the individual's early history of alcohol related problems, noting that the individual had a positive family history for alcoholism and that the individual began drinking at an early age. Report at 12. He found that the individual's excessive drinking has caused significant problems in

2/ The DOE psychiatrist also administered a personality test to the individual, the Minnesota Multiphasic Personality-2 (MMPI-2), but did not rely on the results for his diagnosis. He concluded that the individual's MMPI-2 clinical profile was within normal limits, and that his alcoholism profile was moderately elevated, but not to a level of significance. Report at 8. The DOE psychiatrist also noted that the individual's blood test results were consistent with - but did not prove - the individual's assertion that at the time of psychiatric examination he was not drinking excessively. *Id.*

his relationships with family members. *Id.* He found that by the mid-1980s, the individual had developed tolerance to alcohol, and noted that the individual could drink a case of beer over eight hours without becoming severely physically impaired. He also noted that the individual's alcohol tolerance was evident at the time of his 1986 DWI, when the individual functioned fairly well with a significantly elevated blood alcohol level (0.15). *Id.*

The DOE psychiatrist indicated in his report that in spite of medical problems and warnings from his employer, the individual did not permanently curtail his excessive drinking following his first DWI.

After his first DWI he was diagnosed as being a "problem drinker" and the evaluator felt that it was likely that there would be future problems with alcohol and that he may need further legal problems to overcome denial. Within a year [the individual's] drinking had increased to the point that he sought medical attention for alcoholic gastritis/hepatitis. Abnormal elevations in liver enzyme levels were noted and his physician told him to stop drinking or drink no more than one drink per night. He was advised that if he was unable to do this he would have to stop drinking altogether. In 1987 the DOE consultant psychiatrist . . . noted that [the individual] had problems with alcohol and was probably psychologically dependent on alcohol. [The individual] resumed drinking and by January of 1988 acknowledged drinking eight 12 oz. beers in five hours. On 5/22/01 [the individual] had his second DWI.

Id. Finally, the DOE psychiatrist finds that the individual's continued consumption of alcohol following his second DWI indicates an absence of rehabilitation and reformation. *Id.* The DOE psychiatrist summarizes the individual's consumption of alcohol and his intentions at the time of his October 2001 examination as follows:

In his [2001 PSI, the individual] indicated he currently drinks a six-pack of beer over the weekend while home watching TV: "like if I'm sitting at the house I'll get a six-pack, sit there and watch" (page 48). In our interview he recalled that his last drink was Saturday, three days before the interview. He recalled that he had visited [out of town] with his wife and drank a "12 pack during the night." When I asked him about his future

intent with respect to drinking he said it would be "like what I'm doing now." He said he planned to do "no driving" after he had been drinking.

Report at 6.

Having found no rehabilitation or reformation from alcohol abuse, the DOE psychiatrist made the following recommendations concerning treatment that would result in rehabilitation.

First of all, [the individual] would need to want to enter into treatment. If he chose to go into treatment, outpatient treatment of moderate intensity would be adequate. By moderate intensity I mean a treatment regimen such as Alcoholics Anonymous a few times per week, or perhaps a program of weekly individual counseling by a substance abuse counselor. Duration of such treatment should be a year or two to provide adequate evidence of rehabilitation and reformation.

Report at 11-12. The individual's psychiatrist, while agreeing that the individual suffered from Alcohol Abuse, made slightly different recommendations for treatment. In his January 30, 2002 evaluation, the individual's psychiatrist recommended that the individual make a commitment to his employer to abstain totally from alcohol for at least one year, and to submit to random urine drug screens/breath alcohol at a relatively high frequency for at least one year. He did not recommend that the individual participate in AA, but thought that he could benefit from a psycho-educational program of some kind. January 30, 2002 Evaluation at 7.

2. The Individual's Abstinence and Treatment Decisions

Clearly, a commitment to abstain from alcohol and to seek proper treatment are necessary requirements for any showing of rehabilitation by the individual from his diagnosis of Alcohol Abuse. As discussed below, I find that the individual has committed himself to a program aimed at supporting his ongoing sobriety. I also find that he has successfully demonstrated that he has refrained from consuming alcohol since February 22, 2002.

At the hearing, the individual testified that following his 2001 DWI, he did not immediately stop drinking because he did not believe that he was a problem drinker. He also did not believe that his drinking was of concern to the DOE, only his driving while

under the influence of alcohol. TR at 230. His thinking began to change in late November 2001 when his security clearance was suspended. At that time, his manager asked him what his intentions were, and the individual answered that he planned to see a private doctor who would confirm that he was not an alcoholic. The individual's division director then called him and strongly encouraged him to be more cooperative with the DOE and to get assistance from the facility's EAP. TR at 276. In December, the individual contacted the EAP and met with its medical director and the EAP social worker. He received a medical examination from the EAP medical director, who referred him to a psychiatrist (the individual's psychiatrist) for an evaluation of his alcohol consumption. *Id.* at 277. Following his meeting with the medical director, the individual stated that he made a decision to completely stop consuming alcohol as of January 1, 2002. TR at 275.

After meeting with the individual in late January 2002, the individual's psychiatrist recommended that he enter into a recovery agreement with the EAP, which the individual did on February 22, 2002. The term of the agreement is one year. See testimony of EAP social worker, TR at 105. The EAP social worker described this agreement as follows:

He's been on a recovery agreement in which he, (1) agreed to maintain total abstinence from alcohol or drugs; (2) report prescribed medications to the medical department within three working days; (3) submit to drug and alcohol testing, that's breathalyser and urine/drug, a minimum of 12 samples within a year; (4) participate in the psycho educational program that has been done with [the individual's EAP counselor], who is an alcohol and drug counselor, and also to come to the EAP bimonthly, or monthly [for follow-up meetings with the EAP social worker]; and (5) he agrees to execute all forms necessary to verify his compliance with treatment and recovery.

TR at 105. The EAP social worker testified that to the best of her knowledge, the individual has complied with all the terms of this recovery agreement, and he has been randomly tested for alcohol and drugs on a monthly basis. *Id.* at 105-106. She also testified that she believed that he had maintained his abstinence from alcohol pursuant to this agreement, based on his random alcohol tests, and his verbal assertions and demeanor during his follow-up meetings with her. TR at 109.

In his testimony, the individual strongly asserts that he has completely abstained from alcohol since the beginning of 2002. He testified that he has had no cravings for alcohol and that he expects no problems in maintaining his abstinence. TR at 231. He stated that he found the sessions with his EAP counselor to be helpful because he is helping the individual to gain a better perspective on his past drinking and to see the difference in what's happening with his family relationships now that he doesn't drink. TR at 232. 3/

The individual has consistently maintained that he last consumed alcohol in late December of 2001. The individual's psychiatrist wrote in his February 6 evaluation that the individual reported to him on January 30, 2002 that he consumed "limited amounts of alcohol over the preceding Christmas holiday." Individual's Psychiatrist's evaluation at 2. I find the individual's testimony in this regard to be credible. However, given the individual's longstanding pattern of alcohol abuse, his assertions alone are not a sufficient evidentiary basis for establishing that he is maintaining abstinence from alcohol. As I stated in telephone conversations with the individual and at the outset of the Hearing, the individual must provide a convincing amount of corroborative testimony or other evidence in order for me to accept his assertions that he has been abstaining from alcohol. TR at 7.

For the period from January 1, 2002 until he formally executed the EAP recovery agreement on February 22, 2002, the only significant corroborative evidence for his abstinence is the testimony of his wife. However, she seemed to lack an awareness or recollection of the individual's alcohol consumption. She testified at the Hearing that she had not seen him consume alcohol in "almost" a year, although he has acknowledged that he consumed some amounts of alcohol during the period from June to December of 2001. Only when she was reminded about the out-of town visit that she and the individual had made in October 2001, did she acknowledge that she

3/ The individual's EAP counselor declined to testify at the Hearing. Instead, he submitted a letter to the DOE in which he stated that the individual's prognosis was "satisfactory" and that "there has been no evidence of drinking either through self report or dysfunctional behavior." He added that he did not plan to become "more involved in this case due to the fact that you have in your possession two psychiatric reports." May 25, 2002 letter to the DOE submitted as Individual's Exhibit A.

had seen him consume a significant amount of alcohol on that trip. TR at 203-204. She stated that she could not remember whether she saw the individual consume alcohol over his 2001 Christmas vacation, although he acknowledges doing so. TR at 204. Her responses to most questions were uncertain and tentative. Accordingly, I cannot give much weight to her testimony. Although none of the witnesses called by the individual reported seeing him drink in 2002, none of them were regular visitors to the individual's home in early 2002 and in a position to observe his activities.

Under these circumstances, I believe that the individual's period of sobriety must be measured from his signing of his recovery agreement with the EAP on February 22, 2002. From that time, the individual was subjected to random tests for alcohol, and saw his counselor and the EAP social worker on a regular basis. As noted above, the EAP social worker testified that based on her observations she believes that the individual is maintaining his abstinence from alcohol. There is also testimony from his long-time co-worker and friend that sometime in 2002 when the individual stopped by his home to fix his car, the individual refused a beer offered to him by the co-worker. TR at 198. The individual's brother testified that since the individual's 2001 DWI, he and the individual have not consumed alcohol together. His brother also testified that he visited the individual's home on a Sunday in May 2002 and the individual was not consuming alcohol. TR at 161-162. At the Hearing, the DOE Psychiatrist also concluded that the individual has been abstinent at least since signing the EAP recovery agreement. TR at 146. I therefore find that the individual has provided sufficient corroborating evidence to support the position that he has not consumed alcohol since February 22, 2002.

3. The Individual's Progress Toward Rehabilitation

At the hearing, the DOE psychiatrist and the individual's psychiatrist were both present to hear the testimony of the individual and the EAP social worker concerning his rehabilitation efforts. At the outset of the hearing, the DOE psychiatrist testified concerning his diagnosis of alcohol abuse and his belief that the individual needed to demonstrate a full year of sobriety and the completion of a rehabilitation program in order to mitigate the DOE concerns about his alcohol abuse. TR at 85-88. He noted that at the time of his examination of the individual in October 2001, the individual had not yet acknowledged to himself that he had a problem with alcohol.

. . . he didn't feel, first of all, when I saw him, that he had a problem. One of the first requirements of demonstrating rehabilitation and reformation from a problem is that you acknowledge that there is a problem.

TR at 87.

The individual's psychiatrist testified concerning the individual's progress toward rehabilitation in 2002. He stated that he initially saw the individual in late January 2002, again around the beginning of May, and finally on June 3, 2002. TR at 116-117. He testified that as of June 3, the individual had made significant progress in understanding that his abstinence from alcohol was improving his life.

He's in less conflict with his wife. She's back in the house. He feels like he's making better decisions. He feels better physically. He's not having to defend his behavior or actions anymore. It's made a big difference.

TR at 127. He also testified that the individual's sessions with the EAP counselor appeared to be an appropriate rehabilitation program for him (TR at 125). He stated that the individual's one year recovery agreement with the EAP created a beneficial situation that greatly increased the likelihood that he would remain abstinent from alcohol.

In this case, [the individual] stands the risk of losing his job and his security clearance, because of the recovery contract that he's under, so his success rate is probably 90 percent or higher.

. . . Without the recovery agreement, he has a least a 50/50 chance of relapsing, or higher.

TR at 127. Under questioning, the individual's psychiatrist stated that this low risk of relapse would exist "as long as his job is on the line." TR at 139.

I think that as long as he stays under the contract that his chance of a relapse is extremely low. I think he should be kept under that contract a long time. I think if four or five years passed, then it wouldn't be an issue anymore.

TR at 140. He recommended that the contract be in place for four or five years. However, he thought that the individual's risk of relapse when the current contract expired at the end of one year would be about fifty percent, because of the individual's continued awareness that consuming alcohol could jeopardize his job. He said that extending the EAP contract to two years would bring the individual's long term risk of relapse below 30 percent, and a four year contract would bring it below 10 percent. TR at 141-142. He testified that as long as a recovery agreement was in effect, he considered the individual reformed and rehabilitated. TR at 139.

Following this testimony, the DOE psychiatrist was invited to provide his opinion concerning what he had heard about the individual's recovery efforts since he examined him in October 2001, and to provide an updated prognosis concerning his rehabilitation. He stated that the individual has made a "pretty good start" in his recovery by responding to the external forces that directed him into treatment. TR at 143. He continued to believe that after only three months of abstinence pursuant to the EAP recovery agreement, the individual was "still at a fairly high risk for relapse." TR at 146. The DOE psychiatrist cited previous instances where the individual resumed heavy alcohol consumption after being warned not to do so. TR at 147. He commented that the individual was just beginning to realize that he has a problem with alcohol, and that the individual had to adhere to this realization to ensure long-term rehabilitation and reformation. TR at 147-148. He concluded that he still believed that the individual needed to continue his abstinence and recovery program for a full year to mitigate the DOE's concern.

I would still like to see what happens during the course of the year, when he's tempted, if you will -- or when a group goes [on vacation] or the holiday parties come up, things where recently he's drunk fairly heavily in those types of situations, how those will be handled, and once that is under his belt, I'd feel much better saying that it does look like there is evidence of rehabilitation or reformation.

TR at 148. The DOE psychiatrist also expressed concern that the individual had almost completed his program of sessions with the EAP counselor. He felt that a continuation of these sessions or participation in Alcoholics Anonymous (AA) would be important for helping him to maintain his abstinence from alcohol.

. . . it sounds like he's made a good start with three to five months [of abstinence], but I would recommend an additional completion of a year, with a little more than he has set up now as a treatment program -- "a little more" meaning on the order of once-a-week meetings with the substance abuse specialist, in a group, like AA, or individual work, someone experienced in the field, like [the individual's psychiatrist].

TR at 150. The individual's psychiatrist responded that he agreed that the more counseling the individual gets, the easier it will be for him to remain abstinent. However, he continued to believe that the likelihood was strong that the individual would abstain from alcohol under the EAP agreement. TR at 151-152. 4/

Following the Hearing, the individual contacted the EAP social worker to revise his EAP recovery agreement in accordance with the recommendations made by the individual's psychiatrist and the DOE psychiatrist. In a memorandum to me dated June 13, 2002, the EAP social worker indicated that the individual had signed a second Recovery Agreement, with the same terms and conditions, that extends for an additional year, until February 22, 2004, his commitment to the EAP. She also stated that the individual had made arrangements to continue his sessions with the EAP counselor for the next six months. June 13, 2002 memorandum entitled "Verification of Treatment Plan for [the individual]".

In the administrative review process, the Hearing Officer has the responsibility for making the determination as to whether an individual with alcohol and/or drug problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation from substance abuse, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation or reformation. See, e.g., *Personnel Security Hearing (Case No.*

4/ There is a medical consensus in that both psychiatrists agree that if the individual continues to adhere to the terms of his EAP recovery agreement, to receive counseling, and to abstain from alcohol for a full year, he will have demonstrated rehabilitation from the DOE's Criterion (j) concerns. I believe that this consensus constitutes well-informed expert opinion concerning rehabilitation.

VSO-0027), 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation). In the present case, while I believe that the individual clearly is committed to working with the DOE to resolve its security concerns, I am unable to find that there has been sufficient rehabilitation or reformation of his diagnosis of alcohol abuse at this time to mitigate those concerns. My position is based primarily on the individual's three month period of abstinence and on the expert testimony by the DOE's board-certified psychiatrist that this period of abstinence does not yet establish the individual's rehabilitation or reformation.

In cases filed with this Office, it is very rare for a psychiatrist to find reformation or rehabilitation where an individual has been abstinent for less than one year. See *Personnel Security Review (Case No. VSA-0049)*, 25 DOE ¶ 83,011 (1996) (Hearing Officer who found individual rehabilitated from alcohol dependency based on a 28-day inpatient treatment program and three months' abstinence was found on appeal not to have considered the psychiatrist's testimony that the passage of time was an important factor in lowering the risk of relapse). This is because, as the DOE psychiatrist stated at the Hearing, a period of one year is generally viewed by medical professionals as necessary to reach a state of full remission (as opposed to partial remission) from a diagnosis of alcohol abuse. TR at 85. The DOE psychiatrist cites the DSM-IV as support for this position. *Id.*

At the time of the Hearing, the individual had only demonstrated three full months of abstinence from alcohol and participation in a rehabilitation program, although he has committed himself to a monitored program of alcohol abstinence with his employer's EAP for two full years. The individual also has obtained alcohol counseling through the EAP and made arrangements to continue that counseling for the next six months. The individual's psychiatrist testified that with such a program in place, the individual has a very low risk of relapse and has demonstrated rehabilitation and reformation. The individual's psychiatrist asserts that the individual's current determination to abide by his EAP recovery agreement, and the counseling and alcohol testing that he is receiving pursuant to that agreement, persuades him that the individual's three months of demonstrated abstinence are sufficient to show rehabilitation.

However, I find the position of the DOE psychiatrist more persuasive. Even with the EAP recovery agreement, the DOE psychiatrist sees a significant risk that the individual may

relapse during the first year of abstinence, especially in light of the individual's past disregard of warnings about his alcohol use. The DOE psychiatrist believes that a full year of abstinence from alcohol, demonstrating that he can handle the challenges to abstinence posed by holidays, vacations and other circumstances, is necessary for the individual to demonstrate rehabilitation or reformation. I find these concerns raised by the DOE psychiatrist to be reasonable and persuasive, and I accept his conclusion that rehabilitation or reformation has not yet occurred. My observations at the Hearing also lead me to agree with the DOE psychiatrist's assessment that the individual is still in the early stages of recognizing that he truly has a problem with alcohol. With only three months of demonstrated abstinence, the individual's risk of relapse remains significant. Accordingly, I believe that it would not be appropriate to restore the individual's access authorization at this time.

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 two alcohol related arrests in 1986 and 2001, and his apparent disregard of DOE concerns about his consumption of alcohol that he received at Personnel Security Interviews in 1987 and 1988. The Notification Letter also refers to his continued consumption of significant quantities of alcohol after his May 2001 arrest.

The cited arrests and other actions of the individual resulted from his use of alcohol, and are not the type of unusual behavior that is properly raised as an independent security concern. As discussed above, the individual is currently abstaining from alcohol and is actively participating in a monitored EAP recovery agreement. 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 we were to resolve the Criterion (j) security concern in the individual's favor, it would be appropriate to reinstate the individual's access authorization.

IV. 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 restoring his 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'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.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: July 31, 2002