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September 20, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 12, 2002

Case Number: VSO-0533

This Decision concerns the eligibility of 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." A Department of Energy Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth below, it is my decision that the individual's security clearance be restored.

I. Background

The individual is employed by a contractor at a DOE facility, and held an access authorization for 20 years. In July 2001, DOE conducted a Personnel Security Interview (PSI) with the individual. DOE Exhibit 6-1. The DOE suspended the individual's access authorization in November 2001 as a result of derogatory information that is set forth in the Notification Letter, and is summarized below.

The Notification Letter states that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8(j). The DOE Operations Office invokes Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In this regard, the Notification Letter states: (1) that a DOE consultant-psychiatrist diagnosed the individual as alcohol dependent, but in partial remission, and; (2) that the individual was arrested in April 1982 and in February 2001 in alcohol-related incidents.

In a letter to DOE Personnel Security, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On March 12, 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, I set a

hearing date. At the hearing, the DOE counsel called two witnesses, the DOE consultant-psychiatrist (DOE psychiatrist) and a DOE personnel security specialist. The individual testified and also elected to call three colleagues and her two daughters as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or 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). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer, I am directed to make a predictive assessment. 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 opinion that the individual's access authorization should be restored as I 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(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The facts in this case are uncontested. The individual has been employed by a DOE contractor for a number of years in a job that required that she maintain a security clearance. Tr. at 172. The individual received her clearance in 1981, and was arrested for Driving Under the Influence (DUI) in 1982. Tr. at 12, Ex. 6-3. The individual pled guilty to a reduced charge, paid a fine, and was ordered to attend an

alcohol education class. Ex. 1-2. In 2000, the individual separated from her husband of 30 years. Ex. 6-1 at 36-37. Around September 2000, the individual began drinking heavily--from several glasses to an entire bottle of wine a night. *Id.* at 31-32, 54-56. One day in February 2001, the individual put a deposit on a new home, and that afternoon returned to her house and consumed several glasses of wine while she was alone. *Id.* at 9-10. That evening, she drove to a restaurant to celebrate with her daughter, and had a couple of drinks with dinner. *Id.* at 12-14. [1] While driving home from the restaurant, she was arrested for DUI, and after failing a breathalyzer test the police transported her to a detoxification unit to spend the night. *Id.* at 14-19. Her daughter picked her up the following morning. *Id.* at 14. The individual promptly reported the incident to DOE security. Ex. 4-1, 4-2. According to the individual, that was the last time that she has consumed an alcoholic beverage. Tr. at 47. As a result of the arrest, she was given a probationary drivers license and ordered to: (1) pay a fine; (2) attend a Level II alcohol class; (3) participate in 68 hours of alcohol therapy classes; and (4) undergo random alcohol testing. Ex. 1-2.

In March 2001, the individual moved in with one of her daughters while awaiting completion of her new home. PSI at 35-36. In June 2001, the individual was divorced from her husband. Ex. 1-2 at 3. As a result of the DUI, DOE security conducted a PSI with the individual in July 2001 in order to resolve the derogatory information. Ex. 6-1. At the time of the PSI, she had completed the Level II alcohol class and 16 hours of the required 68 hours of therapy. PSI at 7-8. She was still driving on a probationary license and had passed all of her random alcohol tests. *Id.* at 20-23.

During the interview, the individual consented to an evaluation by a DOE psychiatrist. PSI at 64. The DOE psychiatrist evaluated the individual in October 2001, and also reviewed laboratory tests that were performed earlier that month. Ex. 3-1. The blood and urine tests showed significant abnormalities associated with excessive drinking, including enlarged red blood cells (the MCV test), and elevated SGOT and SGPT levels. [2] Ex. 3-2 at 3. The individual's GGTP was not elevated, which suggested to the psychiatrist that she was probably not drinking at the time of the interview. Ex. 3-1 at 5. According to the psychiatrist, the test results coincided with the individual's statements during the interview, and suggested that ". . . [she] had been drinking excessively, but probably has stopped. Therefore, the GGTP has gone down to normal, but the SGOT, SGPT, and MCV are slower to resolve and therefore have not yet returned to normal." Ex. 3-1 at 5. At the conclusion of the interview, the psychiatrist opined that the individual has had alcohol dependence which was then in partial remission, and that her admitted alcohol usage was consistent with the laboratory findings. *Id.* at 5-8. He also concluded that because the two DUIs were 20 years apart, "one year of abstinence, completion of the program, and continued abstinence should suffice regarding treatment if she continues to abstain." *Id.* at 7.

1/ The individual's daughter noticed that her mother had been drinking heavily and later testified that she was angry with herself for not stopping her mother from driving. Tr. at 65.

2/ The psychiatrist testified at the hearing that the SGOT and SGPT measure the level of the individual's liver enzymes. Tr. at 30. These indicators, if related to alcohol, remain elevated and do not fall quickly. *Id.* In contrast, the GGTP is a liver enzyme that rises and falls quickly with alcohol use. *Id.*

On November 30, 2001, the manager of the DOE Operations Office suspended the individual's clearance. Ex. 2-6. The individual requested a hearing on February 28, 2002.

B. Evidence of Rehabilitation and Reformation

As evidence of her rehabilitation and reformation, the individual presented proof that she had completed the court-ordered alcohol treatment program, recent laboratory studies that showed normal results, and witness testimony that she had abstained from alcohol for 16 months (since February 2001 when she was arrested for DUI). The DOE psychiatrist offered an updated opinion at the conclusion of the hearing that the individual had provided adequate evidence of rehabilitation and reformation from alcohol dependence.

1. Completion of Recommended Alcohol Treatment Program

After the individual was arrested for DUI in February 2001, the court ordered her to complete 24 hours of Level II alcohol education, 68 hours of alcohol therapy classes, 48 hours of community service, and random alcohol testing. The individual successfully completed these requirements by March 9, 2002. Tr. at 43-45; Indiv. Ex. 1; Ex. 3-1 at 6.

The individual also introduced into evidence a set of laboratory studies from February 2002 that reflect normal results on the MCV, SGPT, and SGGT. *See* Indiv. Ex. 2. These factors were modestly elevated while she was in the middle of her rehabilitation in October 2001, but had returned to within the normal range in the February 2002 tests. Indiv. Ex. 2; Ex. 3-1 at 5. *See Personnel Security Hearing*, OHA Case No. VSO-0412, 28 DOE ¶ 82,792 (2001) (explaining the use of the GGT and MCV levels to determine alcohol use); *Personnel Security Hearing*, OHA Case No. VSO-0415, 28 DOE ¶ 82,806 (2001). The DOE psychiatrist agreed that the individual's 2002 test results were "good," and within normal limits. Tr. at 41-42.

The DOE psychiatrist testified early in the hearing that one of his requirements for evidence of reformation and rehabilitation was that the individual actually incorporate the lessons learned from the classes into her life, and not merely attend classes because of a court order. Tr. at 31-33. The testimony of the individual's daughters supports the individual's statements that attending the alcohol classes has affected and improved her life. Tr. at 60-68. [3] Both of the individual's daughters praised her new alcohol-free lifestyle, and credit the individual's abstinence and successful completion of the alcohol treatment program with major improvements in the relationship between mother, daughters and grandchildren. Tr. at 57-58, 61-62. The individual readily admitted that she had a drinking problem in the past, and credited the alcohol classes with helping her to stop using alcohol and to improve her life. Tr. at 47-49. She testified under oath that she has no desire to drink now, and has not since the date of her arrest. Tr. at 48, 51. Under questioning by the DOE psychiatrist at the hearing, she testified that if she found herself around alcohol, she would talk to one of her daughters or to her alcohol counselor. Tr. at 50, 54.

3/ One daughter testified in person and one testified by telephone. Tr. at 54-55.

At the hearing I was able to personally observe the closeness of the relationship between the individual and her daughter, and the obvious pride that the individual's daughter had in her mother's recent accomplishments. The daughter who testified in person had also lived with the individual in 2001and was currently working at the same site, so she had extensive personal knowledge of the positive change in her mother's attitude and behavior. Tr. at 61. The daughter testified that her mother enjoyed the alcohol therapy classes and would discuss what she had learned with her daughter when she came home from class. Tr. at 68. She also testified that her mother is now "enjoying life," attending school, and is much more social than she was prior to her alcohol arrest. Tr. at 62. I found her to be both candid and credible. Her description of the individual's new personality was supported by the testimony of her mother's co-workers who uniformly applauded the individual's new lifestyle, attitude, and strength. Tr. at 36, 70-83. They testified that the individual seemed to be "getting herself together," and exhibited an "increase in her excitement level." Tr. at 73-74, 82.

I was also impressed by the individual's honesty in admitting that she had an alcohol problem, and with her humility in attributing this insight, and her current happiness, to her alcohol therapy. She admitted that the circumstances surrounding the DUI arrest were embarrassing, but believed that they "happened for a reason," and actually did her much good. PSI at 34-35. It is evident from my observations, the testimony of her colleagues and family, and documentary evidence that the individual did more than just sit through classes under court order–she actually absorbed the lessons, discussed them with her family, and used them to improve her life.

The individual's daughters strongly support her efforts to remain abstinent and are an important part of her rehabilitation. Tr. at 57. They were especially grateful for the new family closeness that evolved as their mother went through therapy. Tr. at 61, 62. The individual credits the therapy with teaching her a lot about herself and helping her to become more independent, especially after her divorce. Tr. at 49. The individual is now working on her new home, attending night school in order to train herself for a new career, and is very excited about her accomplishments. Tr. at 41-44, 47, 83. The individual's sworn testimony about her continued abstinence is supported by witness testimony and the results of her recent lab studies that show normal indicators. Indiv. Ex. 2; Tr. at 81. *See Personnel Security Hearing*, OHA Case No. VSO-0404, 28 DOE ¶ 82,844 (2002) (accepting testimony of individual and witnesses regarding length of individual's abstinence). Thus, I believe the individual's contention that she has abstained from alcohol for 16 months.

2. Testimony of the DOE Psychiatrist

After evaluating the individual's 2002 test results, documentation from the completion of the treatment program, and testimony regarding her current lifestyle, the DOE psychiatrist testified at the hearing that the individual has shown adequate evidence of rehabilitation and reformation from alcohol dependence. Tr. at 69. The DOE psychiatrist testified at the beginning of the hearing (before the individual and her witnesses testified) that the individual would have a good prognosis if she took her alcohol therapy classes seriously and abided by the recommendations that he made in his evaluation of October 2001. Tr. at 32. He

testified that a solid abstinence plan, along with stability in her life and an acceptance of the fact that she has a serious alcohol problem would minimize the risk of relapse. Tr. at 33. It is clear that the individual met the conditions for a good prognosis because, at the conclusion of the hearing, the DOE psychiatrist commented that the individual "seems to be fairly low risk [for a relapse]." Tr. at 69-70. He further opined that were she to have a relapse, the risk of a lengthy relapse would be fairly low due to the active support of her children. *Id.* He concluded his testimony as follows: "And it does seem like I would at this point consider that she's rehabilitated within the meaning of 10 CFR." *Id.*

I find that the individual has submitted adequate evidence of rehabilitation and reformation from alcohol dependence. In reaching this conclusion, I found the testimony of the psychiatrist and the individual's witnesses to be persuasive. Based on the foregoing, I find that the individual has mitigated the security concerns raised under Criterion J. The last alcohol-related incident occurred 16 months ago, and the individual has abstained from alcohol since then. She completed the court-ordered treatment program, has admitted her alcohol problem to herself and to her family, and credits the treatment program with teaching her valuable lessons that have reformed her behavior. These positive steps suggest that the individual will not turn to alcohol in the future if faced with a stressful period in her life.

III. Conclusion

As explained in this Opinion, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (j) in suspending the individual's access authorization. The individual has, however, presented adequate mitigating factors, set forth above, that alleviate the legitimate security concerns of the DOE Operations Office. In view of this criterion and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: September 20, 2002