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**July 18, 2002**  
**DEPARTMENT OF ENERGY**  
**OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 31, 2002

Case Number: VSO-0534

This Decision concerns the eligibility of XXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office determined that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should not be restored at this time.

**Background**

The individual is employed by a contractor at a DOE facility, and his job requires that he have an access authorization. The local DOE security office issued a Notification Letter to the individual on January 31, 2002. The Notification Letter alleges under 10 CFR § 710.8(j) that the individual is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or suffering from Alcohol Abuse, without adequate evidence of rehabilitation or reformation.

These concerns arose when the individual reported to the DOE that he had been arrested for Driving While Intoxicated (DWI) on May 11, 2001, after being involved in an accident in which he totaled his vehicle. The individual cannot remember what happened ten minutes before or 45 minutes after the May 2001 accident. The legal limit in the individual's state for Blood Alcohol Content (BAC) is .08, and the individual's BAC on May 11, 2001 was .19. The individual's May 2001 arrest was his third DWI arrest in 22 years. The individual was charged with DWI in 1980, but as explained below, he denies that he was driving the vehicle. No blood-alcohol reading was taken in 1980. In 1982, the individual was charged with DWI after being involved in an accident when his BAC

measured .23. The local DOE security office conducted a personnel security interview (PSI) in June 2001. After the PSI, the DOE had the individual evaluated by a DOE consultant psychiatrist.

The psychiatrist submitted a report to the local DOE security office in October 2001. The psychiatrist's evaluation was based on his review of information in the individual's personnel security file, the results of psychological and laboratory tests, and a personal interview with the individual. The psychiatrist's report found that the individual suffered from "Alcohol Abuse," according to *The Diagnostic and Statistical Manual of the American Psychiatric Ass'n, IVth Edition, Text Revision*, also known as *DSM-IV-TR*. The psychiatrist noted that the individual had two DWI arrests when he had very high BAC levels—two or three times the legal limit—and in both episodes, the individual rolled his vehicle. He therefore judged the individual's symptoms, although not "recurrent" (i.e. occurring within a 12-month period) as that term is defined in the *DSM-IV-TR*, to be "persistent and severe." According to the Report, "the alcohol-related arrests showed severe levels of impairment in that [the individual] appeared to have passed out or completely lost control of his vehicle while driving in a highly intoxicated state." DOE Consultant Psychiatrist's Report (DOE Exhibit 5) at 8. The psychiatrist also diagnosed the individual as suffering from "Obsessive-Compulsive Disorder," which, by itself, would not be expected to adversely affect judgment or reliability. He noted that the individual's symptoms had been mild when untreated, and even less with medication treatment. However, he found that "this anxiety disorder may make [the individual] more vulnerable to episodes of heavy binge drinking." *Id.* The psychiatrist found that there was no adequate evidence of the individual's rehabilitation or reformation. The psychiatrist's report stated that in order to show rehabilitation or rehabilitation, the individual would need to stop drinking, and have some desire to enter into treatment, which in his case could be "outpatient treatment of moderate intensity," such as Alcoholics Anonymous (AA) a few times per week, or perhaps weekly individual counseling sessions, lasting for a year. *Id.* at 9.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel called two witnesses: the DOE consultant psychiatrist who evaluated the individual, and the individual's current group supervisor at the DOE facility. The individual was represented by counsel; he testified on his own behalf, and called seven other witnesses, including two alcohol treatment professionals, current or former coworkers, friends who were acquainted with his personal life, and one family member. The DOE submitted 15 written exhibits, and the individual submitted six written exhibits at the hearing.

### **Standard of Review**

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the 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 CFR § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in § 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 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 continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 CFR Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 CFR § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 CFR § 710.7(a). *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. For the reasons discussed below, it is my opinion that this individual's access authorization should not be restored at this time.

### **Findings of Fact**

The individual admitted the factual allegations in the Notification Letter about his history of DWI arrests, except for certain details, explained below, which he corrected for the record. However, he challenged some of the facts in the psychiatrist's report, claiming he had already taken the first steps toward an alcohol treatment regimen by the time of the October 2001 interview. In general, the individual tried to mitigate the security concerns by showing that he has stopped drinking and made substantial progress toward rehabilitation since he was interviewed by the psychiatrist more than eight months before the hearing.

### **Testimony at the Hearing**

#### **The Individual**

During the hearing, the individual testified in the presence of the DOE consultant psychiatrist. The individual began his testimony by explaining that his older brother had been driving at the time of the 1980 DWI incident, but that the individual told the police he was driving in order to protect his brother, who was considering applying for a security clearance at the time. Transcript of Hearing ("Tr.") at 79-80. The individual stated that his second DWI arrest was in 1983, not 1982 as stated

in the Notification Letter. *Id.* at 81. He admitted drinking with friends in a bar and driving home before that accident. The individual said that he went to DWI school and attended alcohol awareness classes, and the 1983 DWI charge was dismissed. *Id.* at 82-83. According to the individual, the 1983 experience taught him that “heavy drinking is very dangerous,” so he only drank moderately for the many years between 1983 and 2001.

In 2000, the individual got a new job, and he met a new group of friends, who drank heavily. The individual’s moderate drinking pattern soon increased, and began to include “shots,” i.e. miniatures, in addition to beer. *Id.* at 84-85. The individual claimed that he generally did not drive home after an episode of heavy drinking, but on the night of his accident and DWI arrest in May 2001, he opted to drive home after drinking several shots. *Id.* at 86-87. The individual believes that drinking hard liquor is “a big source of the problems” he has had with DWIs, because he was drinking shots on both occasions before the DWI incidents in 1983 and 2001. He testified that after the May 2001 DWI, he made the decision never to drink hard liquor again. *Id.* at 88-91. As explained below, however, the individual did not stop drinking altogether in May 2001, but continued to drink beer occasionally, until December 2001, when he decided to give up all forms of alcohol.

The individual testified about the steps he took to rehabilitate himself after the May 2001 DWI arrest. Individual’s Exhibit 4. He had an alcohol assessment done by a local substance abuse clinic in August 2001, and he got a report on September 12, a month before his interview with the DOE psychiatrist. He began going to DWI school in October, which he completed in November, Individual’s Exhibit 3, but claims he could not begin alcohol education classes until they became available to him in February 2002. *Id.* at 92-93. The individual began individual alcohol therapy in December 2001. His therapist, whose testimony is discussed below, led the individual to his decision to stop drinking alcohol. The individual’s therapist also suggested that he begin going to AA meetings, which the individual has done approximately twice a week since February 2002. Individual’s Exhibit 5. The individual has an AA sponsor, but claims that he has never been tempted to drink since he swore off alcohol in December 2001. *Id.* at 112. The individual maintains that the DOE psychiatrist got the wrong impression during his October 2001 interview that the individual was not interested in rehabilitation, “because we never really got into that, so treatment was not an issue.” *Id.* at 105.

### **The DOE Consultant Psychiatrist**

The psychiatrist testified twice. In his first appearance, he reiterated the substance and conclusions in his October 2001 report (summarized above), explaining the reasons why he exercised his clinical judgment under the *DSM-IV-TR* to diagnose the individual as suffering from Alcohol Abuse without adequate evidence of rehabilitation, and why he thought this individual needed one full year of sobriety in conjunction with a treatment program to achieve rehabilitation. *Tr.* at 15-48. The psychiatrist’s second appearance came after observing the individual’s testimony at the hearing. The psychiatrist testified that he had not changed his opinion that the individual suffers from Alcohol Abuse, and has not shown adequate evidence of rehabilitation. At the outset, the psychiatrist observed that everything he had heard from the individual was generally in his favor, and he noted

that the professionals treating the individual have given him a good prognosis, in particular the individual's therapist. *Id.* at 118-19. He also noted that the individual showed signs of consistent progress in the eight months since the October 2001 evaluation, including stopping all drinking and beginning treatment in earnest with the therapist in December 2001, six months before the hearing, "beefed up" with AA participation beginning in February 2002, four months before the hearing. *Id.* The critical question addressed by the psychiatrist during his second appearance was "how long is enough" for the individual to show rehabilitation. The psychiatrist answered this question by concluding that the individual has "another four to six months to go before he kind of completes the job." *Id.* at 120.

The psychiatrist stated "there are a number of cautions" that led him to conclude the individual needed a full year of sobriety before achieving rehabilitation. According to the psychiatrist, Alcohol Abuse has a high relapse frequency, as high as 50 percent for the first year, and it is a "very stubborn disorder." He also noted that "when [the individual] did have his slips they were very serious slips." He further observed that "there is also a possibility that [the individual] was so intoxicated that he was blacking out, which raises a whole new range of problems as far as security clearance issues, what things can you keep secret, what do you even know you've done the next day. . . ." *Id.* at 120-21. The psychiatrist said he would think the individual was rehabilitated after completing a year of sobriety, after which the individual would not pose a significant relapse risk. The psychiatrist also stated that the individual was managing the medications prescribed for his Obsessive-Compulsive Disorder in a responsible way so that they would not pose any danger. Under cross-examination by the individual's attorney, the psychiatrist emphasized why he would not be more lenient and recommend less than one year of sobriety for this individual: (1) the individual suffers from another anxiety disorder that may make him more susceptible to binge drinking, (2) the individual's previous lapses were severe, involving auto accidents and extremely high blood-alcohol levels which were two to three times the legal limit, and (3) there was a question of a possible blackout in the most recent DWI. *Id.* at 126-27.

### **The Clinic Official**

An official from the local substance abuse clinic testified on behalf of the individual. The clinic official agreed with the DOE psychiatrist's diagnosis that the individual suffered from Alcohol Abuse, and also agreed that treatment professionals do not draw any distinction between hard liquor and beer. She corroborated the individual's testimony that he took the first step on the road to recovery when he submitted to an alcohol assessment in August 2001, but indicated she believed the individual did not recognize his need for treatment when he first presented himself. She also confirmed the individual's participation in, and successful completion of, an alcohol education program from February to May 2002.

### **The Individual's Therapist**

The therapist, who has had extensive training and many years of experience in the field of alcohol and drug treatment, testified that he has treated the individual since December 2001. He explained

that he favors a diagnostic model different than the *DSM*, one developed at a local university. *Id.* at 62. According to the therapist, this diagnostic model suggests that interventions need to differ significantly, based on the level of problem which the client presents. The therapist diagnosed the individual as having a “situationally-based alcohol abuse problem.” *Id.* at 63. He explained that both as a youth in 1983, and in the few months before the DWI in 2001, the individual had connected with a crowd of people who were heavy drinkers, and in both cases, drank not only beer but also hard liquor in combination with beer. In both cases, according to the therapist, the individual was significantly affected by his environment—the drinkers who were surrounding him—his drinking increased, and the subsequent alcohol abuse problem that resulted was connected to the environmental stimuli. *Id.* at 63-4. The therapist noted that in between the 1983 and 2001 DWIs, the individual’s alcohol use was limited to occasionally drinking a few beers, usually with his brother, over the course of a few hours. The therapist conceded that he would diagnose the individual with Alcohol Abuse at the time of the May 2001 auto accident and DWI, which he characterized as “severe.” However, the therapist asserts that he would not have made the same diagnosis a year before May 2001. *Id.* at 65.

The therapist went on to describe his treatment of the individual, who had quit drinking all forms of alcohol and stopped associating with heavy drinkers by the time he first consulted the therapist in December 2001. At the outset, the therapist asked the individual to examine his value system and decide “whether it’s worth drinking anymore in your life.” *Id.* at 66. According to the therapist, individual decided that his values were connected to his family and his job, and “that it was time to quit.” *Id.* The therapist recounted the individual’s participation in regular individual therapy sessions with him, AA, and the alcohol education program through the local clinic.

The therapist stated that the one-year time line for abstinence, which is standard in the treatment industry for alcohol dependence, was not appropriate for people who, like the individual, suffer from alcohol abuse. In his practice, the therapist uses a six-month criterion for gauging rehabilitation for alcohol abuse. *Id.* at 67. According to the therapist, the individual has met the six-month test, and with all of his other, ongoing therapeutic activities such as AA, the individual has an excellent prognosis. *Id.* at 70.

### **The Individual’s Group Leader**

The DOE Counsel presented the testimony of the group leader of the unit where the individual works. This witness explained the general nature of the unit’s work, why the individual needs an access authorization, and how the individual had been working in an uncleared area since his clearance was suspended. He testified that the individual was an excellent employee, that he would like to have him back, as soon as possible, and that he had never noticed any indication on the job that the individual had an alcohol problem. Finally, he indicated his organization would try to enable the individual to continue working in an uncleared area until his clearance is restored. *Id.* at 7-14.

### **The Individual's Character Witnesses**

The individual called one family member, and four character witnesses who had worked with him at the DOE facility at one time or another. The co-workers testified that they knew the individual to be an excellent worker, that they had never noticed any alcohol-related problems with the individual on the job, that aside from the recent DWI they would never have thought the individual had a drinking problem, and that they would recommend him for a security clearance. *Id.* at 131-55. The witnesses who also socialized with the individual corroborated his claim that he had completely stopped drinking in 2001. The family member also corroborated the individual's claim that he gave up alcohol, described the individual's close family relationships, his vigorous outdoor life-style, and his motivation to remain sober. The family member characterized the 2001 DWI as "a fluke." *Id.* at 155-63.

### **Analysis**

The record supports the concerns in the Notification Letter about the individual's Alcohol Abuse and his DWI arrests. The DOE consultant psychiatrist's written report, submitted some nine months before the hearing, describes the individual's drinking pattern, including the aggravated nature of the two DWI incidents in 1983 and 2001. It explains the basis for the psychiatrist's clinical judgment that the individual suffers from Alcohol Abuse, even though he does not quite meet the criteria for that disorder in the *DSM-IV-TR* because his alcohol-related problems are not "recurrent" within a one-year period, based on the psychiatrist's finding that the problems were "persistent and severe." Finally, it explains why the psychiatrist found the individual had not shown adequate evidence of rehabilitation, and what the individual can do to achieve rehabilitation. The individual's professional witnesses did not contest the factual bases and the diagnosis in the psychiatrist's report. I therefore find the DOE properly invoked the criteria in 10 CFR § 710.8(j).

The pivotal question in this case is whether the individual has shown that he is rehabilitated. The answer from the record before me is that the individual has made substantial progress toward rehabilitation, but he falls just short of making that showing. The individual stopped drinking six months before the hearing, which means that as of the date of this decision, he is five months away from completing the one year of abstinence, which in the psychiatrist's opinion, is the minimal period of sobriety necessary for this individual to show rehabilitation.

The DOE's consultant psychiatrist and the individual's therapist agree on many fundamental points, including the diagnosis of Alcohol Abuse, but they have different opinions about the shortest period of sobriety this individual should achieve to show rehabilitation. The psychiatrist emphasizes the aggravated nature of the individual's two DWI arrests in 1983 and 2001, which both involved motor vehicle accidents after the individual had been drinking so heavily that he registered blood-alcohol levels of .23 and .19—two to three times above the legal limit of .08. The psychiatrist also refers to the individual's Obsessive-Compulsive Disorder, which may make him more susceptible to binge drinking, and the problematical nature of the individual's temporary amnesia after the 2001 crash, which may or may not have been an alcohol-related blackout. While he concedes that there is

nothing magic about the one-year milestone, and admits that he has occasionally recommended a shorter period of sobriety for certain of his patients, the psychiatrist believes that one year of sobriety is appropriate under the special circumstances outlined above. The therapist focuses instead on the individual's recent alcohol treatment regimen, and what he calls the "situational" nature of the individual's Alcohol Abuse, which was apparently limited to two periods of the individual's life when he associated with heavy drinkers and combined beer with hard liquor, separated by nearly two decades of moderate social drinking with no adverse consequences. Under the diagnostic model used by the therapist, he believes that six months of abstinence is sufficient for this individual to show rehabilitation.

I am persuaded by the DOE psychiatrist's explanation of the reasons for his opinion that this individual needs to complete a few more months of sobriety before his access authorization should be restored. There is no question that this individual's two alcohol-related incidents, although isolated and not "recurrent" within a one-year period as that term is used in the *DSM-IV-TR*, were so severe that the individual is lucky to be alive. The individual has made good progress toward rehabilitation since his May 2001 DWI arrest, but I find that he has not as yet achieved rehabilitation. The individual's attorney tried to analogize the situation involved in this case to a recent case in which an OHA Hearing Officer weighed the expert testimony about the period of sobriety necessary to prove rehabilitation, and determined that ten months was enough. *See Personnel Security Hearing*, (Case No. VSO-0495), 28 DOE ¶ 82,860 (2002). I find that the special circumstances involved in this case, especially two DWI arrests following road accidents when the individual had very high blood-alcohol levels, an anxiety disorder that may make the individual more prone to binge drinking, a possible blackout, and only six months of sobriety, distinguish the present case from the situation in Case No. VSO-0495.

In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis of alcohol dependency or alcohol abuse raises important security concerns. *See, e.g., Personnel Security Hearing*, (Case No. VSO-0476), 28 DOE ¶ 82,827 (2001), and cases cited therein. Since I have also found that the individual is not rehabilitated from his Alcohol Abuse, those concerns have not been mitigated.

## **Conclusion**

Based on the entire record in this proceeding, I find that the individual has not resolved the security concerns raised under 10 CFR § 710.8(j). Specifically, I find that he has not resolved the concerns that he suffers from Alcohol Abuse, without adequate evidence of rehabilitation. For the reasons explained in this Decision, I find that the individual has failed to show that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's

access authorization not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 CFR § 710.28.

Thomas O. Mann  
Hearing Officer  
Office of Hearings and Appeals

Date: July 18, 2002