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February 13, 2003  
**DEPARTMENT OF ENERGY**  
**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: July 29, 2002

Case Number: VSO-0553

This Decision concerns the eligibility of XXXXX (the individual) to hold an access authorization<sup>1</sup> 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." The individual's access authorization was suspended by the Manager of a local Department of Energy (DOE) office pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should not be restored.

**I. Background**

The individual has been an employee of a contractor at a DOE facility and has held a security clearance since 1984. After a routine reinvestigation of the individual's background revealed concerns about the individual's use of alcohol and possible falsification regarding the same, personnel security officials (local security office) conducted a Personnel Security Interview (PSI) with the individual on June 27, 2001. Because the security concern remained unresolved after that PSI, the local security office requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). The psychiatrist interviewed the individual on February 12, 2002, and thereafter issued an evaluation to the DOE, in which he opined that the individual suffered from Alcohol Abuse. The local security office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to the individual. Accordingly, the manager of the local DOE office suspended the individual's access authorization, and obtained authority from the Director of the Office of Security to initiate an administrative review proceeding.

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<sup>1</sup>Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the local DOE office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, the DOE psychiatrist, an alcohol and drug abuse counselor, a psychologist, and one of the individual's supervisors. Counsel for both the individual and the DOE submitted exhibits. I closed the record upon receiving the transcript of the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern has not been resolved, and that the individual's access authorization should not be restored.

## **II. *Analysis***

### ***A. The Basis for the DOE's Security Concern***

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual

- (1) "has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for National Security Positions, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sections 710.20 through 710.30" of the Part 710 regulations. *See* 10 C.F.R. § 710.8(f) [hereinafter Criterion F].
- (2) "has been, 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." *See* 10 C.F.R. § 710.8(j) [hereinafter Criterion J].
- (3) "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 national security.” See 10 C.F.R. § 710.8(l) [hereinafter Criterion L].

The statements were based on the DOE psychiatrist’s diagnosis of Alcohol Abuse, the individual’s prior alcohol-related arrests in 1971, 1972, and 2000, and his failure to report the arrests on questionnaires he completed for the DOE in 1983 and 2000. DOE Exhibit 1 at 4-5.

When reliable information reasonably tends to “establish the validity and significance” of substantially derogatory information about an individual, a question is created as to the individual’s eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing 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).

### ***1. Alcohol-Related Arrests and the Failure to Disclose Them***

Regarding some of the information underlying the security concerns in this case there is no dispute. The individual admits that he omitted information regarding three prior arrests (two in 1971 and one in 1972) from an October 17, 1983 Personnel Security Questionnaire (PSQ), and also failed to report these arrests and a February 5, 2000 arrest for Driving While Intoxicated (DWI) on a February 29, 2000 Questionnaire for National Security Positions (QNSP).

“Based on [the individual’s] failure to report his February 5, 2000 driving while intoxicated arrest immediately, [the individual] concedes that DOE properly invoked Criterion F.” Individual’s Opening Statement at 6. Nonetheless, the individual argues that Criterion F only applies to “deliberate” omissions of “significant” information. “[The individual] believed [the 1971 and 1972 arrests] to be insignificant information. The three arrests were nothing more than foolish, immature actions of a teenager. . . . As such, [the individual] contends that the three, teenage, alcohol-related events are insignificant and do not properly invoke Criterion F.” *Id.*

I disagree. First, it is not the arrests themselves that invoke Criterion F. The concern arises from the individual’s failure to report the arrests on questionnaires completed in 1983 and 2000. Moreover, the arrests themselves do raise valid and significant concerns under Criteria J and L, because they involve both alcohol and violations of laws. Thus, while many factors may ultimately mitigate the significance of these prior arrests, the fact that the arrests occurred is clearly “significant” information as that term is used in Criterion F. As such, the failure to report the arrests raises valid and significant concerns under Criterion F, and also raise questions under Criterion L about the individual’s honesty. See, e.g., *Personnel Security Review*, Case No. VSA-0371, 28 DOE ¶ 83,015 (2000) (“[T]he DOE security program is based on trust, and once an individual has breached that trust, a serious question arises as to whether that individual can be trusted to comply with the security regulations.”).

## 2. *Diagnosis of Alcohol Abuse*

As for the DOE psychiatrist's diagnosis of Alcohol Abuse, the individual contends that it "is not supported by substantial evidence, but speculation." Individual's Opening Statement at 8. The DOE psychiatrist "bases his opinion on his belief that [the individual's] arrest in February 2000 constitutes a recurrent alcohol related problem. However, the previous alcohol related arrests are 28 years in the past."

The DOE Psychiatrist's diagnosis was "made according to the standard diagnostic instrument, the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM-IV-TR)." DOE Exhibit 9 at 7. The DSM-IV-TR lists four criteria for alcohol abuse, "A maladaptive pattern of alcohol use leading to clinically significant impairment or distress, as manifested by one or more of the [four criteria], occurring within a twelve-month period." *Id.* In his report, the DOE psychiatrist concludes that the individual's February 2000 DWI arrest "constitutes a recurrent alcohol related problem (criterion three for Alcohol Abuse). This second DWI<sup>2</sup> also likely constitutes a recurrent problem with driving under the influence of alcohol (criterion two for Alcohol Abuse)." *Id.* at 8. The report also quotes a portion of the DSM-IV-TR stating, "In order for an Abuse criterion to be met, the substance-related problem must have occurred repeatedly during the same twelve-month period or been persistent." *Id.* at 7.

Based on the analysis of the DOE Psychiatrist described above, I do not agree with the individual that the diagnosis of alcohol abuse is based on "speculation." I agree that, from a lay perspective, it is difficult to understand how the individual's one DWI arrest in February 2000 constitutes a "substance-related problem" that has "occurred repeatedly during the same twelve-month period." However, the DSM-IV-TR, as quoted by the DOE Psychiatrist, contains the following admonition:

DSM-IV is a classification of mental disorders that was developed for use in clinical, educational, and research settings. The diagnostic categories, criteria, and textual descriptions are meant to be employed by individuals with appropriate clinical training and experience in diagnosis. It is important that DSM-IV not be applied mechanically by untrained individuals. The specific diagnostic criteria included in DSM-IV are meant to serve as guidelines to be informed by clinical judgment and are not meant to be used in a cookbook fashion. For example, the exercise of clinical judgment may justify giving a certain diagnosis to an individual even though the clinical presentation falls just short of meeting the full criteria for the diagnosis as long as the symptoms that are present are persistent and severe.

DOE Exhibit 9 at 7 (quoting DSM-IV-TR at 198). The DOE psychiatrist went on to explain why he thought the individual's symptoms were persistent and severe:

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<sup>2</sup> One of the individual's alcohol-related arrests in the early 1970s was for DWI. DOE Exhibit 1 at 5.

Although [the individual's] last DWI was two years ago, I conclude that his problems with excessive drinking are 'persistent and severe' because of the presence of abnormally elevated liver enzyme levels at the time of my evaluation. These abnormally elevated liver enzyme levels most likely indicate, but do not prove, that [the individual] continues to drink excessively enough to cause liver damage.

*Id.* Hearing officers normally accord great deference to the expert opinions of psychiatrists and other mental health professionals as to the diagnosis of a mental disorder. *See, e.g., Personnel Security Hearing*, Case No. VSO-0498, 28 DOE ¶ 82,851 at 85,876 (2992) ("the DOE Psychiatrist's diagnosis . . . must be given substantial weight"). Moreover, in the present case, two psychologists, one who testified on behalf of the individual and another who is the clinical supervisor of the individual's alcohol and drug abuse counselor, concluded the individual suffers from alcohol abuse and alcohol dependence, respectively. Individual's Exhibit D at 5; Individual's Exhibit C. Thus, while there may be disagreement regarding the degree to which the individual has achieved reformation or rehabilitation from his alcohol problem (an issue that is addressed separately below), the expert opinions available only seem to bolster the DOE psychiatrist's diagnosis of alcohol abuse.

Excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability will be impaired to the point that he will fail to safeguard classified matter or special nuclear material. *E.g., Personnel Security Hearing*, Case No. VSO-0479, 28 DOE ¶ 82,857 (2002). Because such information creates a question as to the individual's eligibility for access authorization, 10 C.F.R. § 710.9(a), the burden falls on the individual 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).

### ***B. Whether the Security Concerns Have Been Resolved***

A hearing under Part 708 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). "In resolving a question concerning an individual's eligibility for access authorization," I must consider

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.

10 C.F.R. § 710.7(c).

***1. Alcohol-Related Arrests and the Failure to Disclose Them***

To the extent that the individual's arrests in 1971 and 1972 raise concerns about the individual's disregard for the law, I agree with the individual's counsel that these events of over 30 years ago represent "the foolish, immature actions of a teenager" and thus do not continue to give cause for such concerns.

As for the individual's failure to disclose his arrests when he completed questionnaires in 1983 and 2000, the concerns are not nearly as easy to resolve, as counsel for the individual acknowledges.

Cases involving verified falsifications or misrepresentations are nonetheless difficult to resolve because there are no other experts to opine about what constitutes rehabilitation from lying, nor security programs to achieve rehabilitation. Therefore, [the] Hearing Officer must look at the statements of an individual, the facts surround[ing] the misrepresentation and the individual's subsequent history, in order to assess whether the individual has rehabilitated himself from the falsehood and whether restoring the security clearance would pose a threat to national security. However, even if a person has not been truthful with the DOE, a security concern regarding honesty may be resolved by a showing that a sufficient period of time has passed during which the individual demonstrates honesty with the DOE. In the present case, [the individual] showed sixteen (16) years of responsible behavior, as such, this should mitigate the concerns about prior behavior.

Individual's Opening Statement at 7 (citations omitted).

In a number of opinions, DOE hearing officers have considered the implications of past falsifications by an individual.

All acknowledge the serious nature of falsifying documents. Beyond that, whether the individual came forward voluntarily to renounce his falsifications appears to be a critical factor. *Compare Personnel Security Hearing*, Case No. VSO-0037, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA Feb. 22, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing*, Case No. VSO-0327 (April 20, 2000), *appeal filed* (falsification discovered by DOE security). Another important consideration is the timing of the falsification: the length of time the falsehood was maintained, whether a pattern of falsification is evident, and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing*, Case No. VSO-0327 (April 20, 2000), *appeal filed* (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). *See also Personnel Security Hearing*, Case No. VSO-0289, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use).

*Personnel Security Hearing*, Case No. VSO-0319, 27 DOE ¶ 82,851 (June 14, 2000), *affirmed* (OSA July 18, 2000).

Although counsel for the individual correctly characterizes some of the factors that should be taken into account in considering “rehabilitation” from falsifications, I disagree with his assessment of how those factors would be applied to the present case. If, for example, the individual’s only failure to disclose information occurred in 1983, and there were nothing but honest behavior since, the passage of twenty years might well be sufficient to demonstrate rehabilitation, i.e. to sufficiently mitigate concerns that the individual will not be honest in the future. Instead, the sixteen years of responsible behavior cited by counsel for the individual was followed by another failure of the individual to disclose his prior arrests, this most recent failure occurring less than three years ago. Moreover, the record indicates that the individual did not come forward to disclose the fact of his February 2000 arrest, but instead acknowledged it only after being confronted with the truth in a Personnel Security Interview in June 2001, less than two years ago. DOE Exhibit 5 at 6.

There are also questions regarding whether the individual has been honest regarding his use of alcohol since the February 2000. The individual contends that in “the last 2 ½ years since [his] February 2000, DWI arrest, [he] has consumed 1 beer on Thanksgiving 2001.” Individual’s Opening Statement at 8. Yet, results of blood tests given as part of the DOE Psychiatrist’s evaluation of the individual in February 2002 can be interpreted to contradict the individual’s assertions regarding his alcohol consumption.

[The individual] had abnormal elevations in two liver enzymes, ALT (42; normal reference 3 -- 30) and Gamma GT (60; normal reference 5 -- 40). In discussing Alcohol Abuse, DSM-IV-TR comments: “*Associated Laboratory Findings: One sensitive laboratory indicator of heavy drinking is an elevation (> 30 units) of gamma-glutamyltransferase (GGT). This finding may be the only laboratory abnormality. At least 70 percent of individuals with a high GGT level are persistent heavy drinkers (i.e., consuming eight or more drinks daily on a regular basis)*” (Page 218). Excessive alcohol use is the most common cause of abnormal Gamma GT elevation, and [the individual] is negative for the next most common causes: infectious hepatitis, liver-damaging medications, or symptomatic acute medical illnesses. Given his history of documented episodes of excessive drinking and his acknowledgment of occasional drinking, by far the most likely cause for his abnormally elevated serum Gamma GT liver enzymes is excessive drinking. His laboratory test results strongly suggest -- but do not prove -- that he currently is consuming alcohol excessively enough to cause mild liver damage.

DOE Exhibit 9 at 6-7.

Counsel for the individual emphasizes the DOE psychiatrist’s statement that the test results do not “prove” that the individual was still consuming alcohol excessively. This is true. However, to raise a security concern, there does not need to be conclusive proof that the individual continued to drink. The strong suggestion, as termed by the DOE psychiatrist, that the individual continued to drink, despite his claims to the contrary, at the very least raises questions regarding the individual’s honesty. And I find nothing in the record that would sufficiently resolve those concerns.

Subsequent blood tests given to the individual in July 2002 show a reduction in the presence of liver enzymes. But, as the DOE psychiatrist points out, this tends to raise more questions than it resolves:

The major point, however, is that these two liver enzyme levels have gone down quite a bit since the time I saw him.

Now, that's kind of a good news/bad news phenomena, as I was telling [the DOE counsel]. The good news is that his liver enzyme levels have gone down. Since I saw him five months earlier, his levels have gone down. Since I saw him five months earlier, I also had evidence in this packet, or subsequent packet, that in July he began documented attendance at AA meetings.

The obvious inference to me is that he is mending his ways and he's drinking less. He received a notification letter in May, started documented AA attendance in July, and then now five months later, his liver enzyme levels are way down. So that's the good news.

The bad news is, by inference, it means that the reason why his enzymes were elevated when he saw me was alcohol. It makes it even more likely that the reason for his elevation in liver enzymes when he saw me was alcohol.

In sum, the legitimate security concerns raised about the individual's dishonesty have not been resolved, both because not enough time has past since his most recent admitted falsification, and also because the blood test results discussed above raise unresolved questions regarding the individual's honesty, including in his sworn testimony in this proceeding.

## ***2. Diagnosis of Alcohol Abuse***

As for the individual's alcohol-related problems, the individual presents no security concern so long as he abstains from drinking. While there are some discrepancies, discussed above, regarding when the individual stopped drinking, there seems to be agreement that by July 2002, the individual was "clean and sober." Thus, the critical factors in this case are the absence or presence of rehabilitation and the likelihood of recurrence of the individual's alcohol abuse.

The DOE psychiatrist described the individual's risk of relapse as follows:

The chances are 70 percent in the next year that by the end of the year he's not going to have a drink, and then the following year, probably a 70 percent chance that he's going to make it through that year, . . .

. . . .

[T]he rough figures are that half of the people each year drop out of sobriety, and I think he's better than that.

Tr. at 117. The individual's alcohol and drug abuse counselor rated the individual's risk as "about the same." *Id.*

Clearly, the individual has taken steps to improve his chances of success, including working with a counselor and attending AA. However, in the context of national security, where an individual is not allowed the benefit of a substantial doubt, I believe that a 30 percent risk of relapse is still too great. I also note that, the DOE psychiatrist stated that he would consider "a year of outpatient substance abuse treatment" as "adequate evidence of rehabilitation or reformation." Tr. at 54. Because of the yet unexplained presence of elevated liver enzymes in the individual's blood in February 2002, I am not convinced that the individual has even been abstinent from alcohol for that long.

Thus, while I consider the concerns raised by the individual's false statements to be significantly more serious than those related to his use of alcohol, the latter concerns remain, at this point, not sufficiently resolved.

### **III. Conclusion**

Upon consideration of the record in this case, I agree with the local security office that there is evidence that raises a substantial doubt regarding his eligibility for a security clearance, and I do not find sufficient evidence in the record that resolves this doubt. Therefore, because I cannot conclude that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest, it is my opinion that the individual's access authorization should not be restored. 10 C.F.R. § 710.27(a). The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: February 13, 2003