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April 8, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: June 10, 2002

Case Number: VSO-0554

This Decision concerns the eligibility of XXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."1/

I. Background

The individual is employed by a Department of Energy (DOE) contractor, which requested a security clearance on his behalf. The ensuing background investigation revealed information that raised concerns regarding the individual's eligibility for a security clearance. In order to further investigate these concerns, the DOE conducted a Personnel Security Interview (PSI) with the individual. During this PSI, the individual discussed his history of alcohol use and incidents related to that use. Because the PSI did not adequately address the DOE's concerns, the individual was referred to a DOE consultant psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation.

After reviewing the transcript of the PSI and the DOE psychiatrist's report, the Personnel Security Director of the local DOE Office determined that derogatory information existed which cast into doubt the individual's eligibility for access authorization. The Director informed the individual of this determination in a letter which set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also 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.

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

The individual requested a hearing on this matter. The Director forwarded the individual's request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The hearing was convened near the individual's job site, and nine witnesses testified. The DOE psychiatrist and a co-worker of the individual testified for the DOE. Testifying for the individual were his wife, two friends, his supervisor and two other co-workers, and the individual himself.

II. Statement of Derogatory Information

As indicated above, the Notification Letter included a statement of derogatory information in possession of the DOE that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Paragraph (h) defines as derogatory any information indicating that the individual has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability." Paragraph (j) refers to information that the individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." Both of these criteria relate to the individual's use of alcohol. As support for these security concerns, the Letter refers to the DOE psychiatrist's diagnosis, in which he found that the individual suffered from alcohol abuse, and is in the early stages of alcohol dependence. The Letter also cites the individual's February 1994 arrest for Obstructing an Officer, an altercation with a friend in "1994 or 1995," and a relationship with a woman in 1998 during which they frequently argued. All of these incidents occurred shortly after, or in conjunction with, the individual's use of significant amounts of alcohol. Finally, the Letter refers to the individual's accounts during the PSI of various periods of excessive use of alcohol from his sophomore year in high school until September 2001.

III. Findings of Fact and Analysis

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all the relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. §

710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. After careful consideration of the factors mentioned above and of all the evidence in the record in this proceeding, I find that the individual has failed to make this showing, and that he should not be granted a clearance at this time.

For the most part, the individual does not dispute the factual allegations set forth in the Notification Letter. Instead, he contends that sufficient mitigating factors exist to indicate that restoring his clearance would not endanger national security. Specifically, he contends that he has stopped abusing alcohol and is therefore no longer an unacceptable security risk. The individual's six witnesses, and the individual himself, testified in support of this claim.

The individual's wife testified that she met the individual in 1995, and has been involved with him continuously since 1997. In that time, she said, she has never considered the individual to be an abuser of alcohol. Hearing Transcript (Tr.) at 22. She stated that when they began dating, he would have "a beer or two when we would go out to dinner together," and that she had never seen him intoxicated during this period. Tr. at 17. Until recently, she testified, the individual would drink on some, but not all, weekends. Tr. at 18. However, she added that the individual has not consumed alcohol since the beginning of this administrative review process, and that, to her knowledge, he last consumed alcohol on June 15, 2002 at a friend's wedding, when he had four beers. Tr. at 17. The last time that he drank to intoxication, she stated, was during the summer of 2001. Tr. at 19. She said that the individual's drinking has not had an adverse effect on their marriage or on the individual's relationships with his friends and family, or on his job performance. Tr. at 21-22. Finally, she testified that, although the individual had committed himself to either cutting down his alcohol consumption dramatically or stopping it altogether, she did not think that he needed to quit unless it was necessary to keep his clearance. Tr. at 23.

The individual's supervisor and co-workers all testified that the individual was an excellent employee, and that none of them had seen any indication, either at work or in their limited social interactions with the individual, that he was consuming alcohol to excess. Tr. at 72-79; 94-113. The individual's two friends also testified. Both indicated that they had known the individual for at least 15 years, and had socialized with him extensively during that time. One friend testified that although he has seen the individual consume alcohol on occasion, he has never seen him drunk and does not think that he has a drinking problem. Tr. at 83-85. The second friend stated that he has also seen the individual drink alcohol on social occasions, and has seen him become intoxicated, with the last such instance occurring "maybe two, three years ago." Tr. at 89. However, the second friend said that this was an isolated occurrence, that the individual's alcohol consumption has not interfered with his personal obligations, and that he does not believe that the individual has a drinking problem. Tr. at 90, 93.

The individual testified that, although in his early college years he "could have been an abuser," he does not now merit such a diagnosis. Tr. at 32. He said that after seeing the DOE psychiatrist, he decided to seek further professional help to determine whether he had a drinking problem. He had two substance abuse education sessions with a licensed therapist, who then referred him to a psychiatrist for an evaluation. Tr. at 32-33; Individual's Exhibit 20. The psychiatrist concluded that the individual was not currently an alcohol abuser. Individual's Exhibit 22. The individual confirmed that his last usage of alcohol occurred in June 2002 at his friend's wedding, when he had "three or four beers." Tr. at 47. He stated that his intention is "to either quit completely or cut back" his alcohol use. Tr. at 38.

The individual then addressed the DOE's concerns regarding his history of alcohol use. He testified that the relationship with the woman that was referred to in the Notification Letter was "volatile," but that alcohol was not the catalyst of their conflicts. "We were incompatible with each other, and we would argue. . . . I'm not going to say that I wasn't having a few beers when we argued . . . .But it was not a catalyst, and it didn't provoke fights to the utmost." Tr. at 40-41. 2/ Other than his 1994 arrest for Obstruction of Justice, the individual added, he has not been arrested for any reason. Regarding the altercation with a friend "in 1994 or 1995" referred to in the Letter, he said that he and the friend "were drinking alcohol, but I don't believe that alcohol was the sole initiating factor. It was a matter of machismo if anything. I mean, alcohol wasn't a catalyst in that. He went to a different school than I did . . . and . . . we were rivals . . . so it got a little heated like that." Tr. at 46. He added that the last time that he was intoxicated was during the summer of 2001, and that he has curbed his alcohol consumption in recent months because of this proceeding. Tr. at 47. The individual concluded that he should get a clearance "because I am reliable, trustworthy, and I use good judgement, and I don't abuse or use alcohol in excess right now, and I don't intend to in the future." Tr. at 49.

In support of these contentions, the individual submitted a number of exhibits, including favorable employee evaluations, written accolades from co-workers, results of blood tests performed in January 2000, February 2001 and February 2002, and a letter from the individual's psychiatrist. The blood tests appear to show normal liver function, and in his letter, the psychiatrist states that, based on information obtained from the individual, he has significantly changed his drinking habits. Individual's Exhibits 10-12, 22.

After reviewing this evidence and the record as a whole, I am convinced that the individual is an excellent employee who has abstained from alcohol use since June 2002, and whose alcohol use for several years prior to that date had not adversely affected his job performance or his personal relationships. However, for the reasons that follow, I cannot conclude that the individual has adequately addressed the security concerns set forth in the Notification Letter.

2/ The Individual stated that this relationship took place from 1992 until early 1995, and not in 1998 as is alleged in the Notification Letter.

As an initial matter, it is essentially uncontroverted that the individual abused alcohol while in college in the early to mid 1990s. The DOE psychiatrist based his diagnosis in part on information about the individual's drinking during this period that he obtained from the transcript of the PSI. For example, during the interview, the individual was asked

> Q. ...Has alcohol ever interfered with your schoolwork, with your job, with your home life, with your family, with your friends?
> A. ...I guess you could say it interfered with my school life 'cause I . . . missed class sometimes . . . .
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> Q. You missed classes . . . why?
> A. ...just staying out late and drinking some beers and just not going to class the next day.

PSI at 82. In his Report, the DOE psychiatrist concluded that this admission satisfied criterion A1 of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) standards for substance abuse (i.e., "recurrent substance use resulting in a failure to fulfill major role obligations at work, school or home" such as "substance-related absences, suspensions, or expulsions from school"). DOE Exhibit 8 at 13. He also cited the individual's arrest and his confrontations with others as evidence of the adverse effects that the individual's alcohol consumption was having on his life during this period. Regarding the arrest, the individual admitted that he drank "about six, seven beers," and "was not drunk," but "just . . . buzzed" before the events that led to his encounter with the police. PSI at 24, 26. He further stated that, prior to the altercation with his friend in "1994 or 1995," they were both drinking alcohol. When asked whether the alcohol was a contributing factor to his behavior, the individual answered "Probably, yes." Tr. at 39-40. Some of the individual's arguments with a female friend during the early nineties were also preceded by alcohol use. PSI at 53. During one argument, the individual accidently struck her arm while closing a car door. He stated that he had consumed eight to ten beers in the eight hours before this incident. PSI at 46. When asked whether the alcohol had affected his behavior, he said "It was probably both ways . . .She had been drinking too . . .it might have [been a] contributing factor[]." Id. In his letter, even the individual's own psychologist wrote "I would certainly agree [that the individual] has abused alcohol in the past in a serious fashion, leading to legal consequences." Individual's Exhibit 22.

If the individual's history of excessive drinking were limited to a period ending in the mid-nineties, it might be possible for me to conclude that this security concern had been mitigated by the passage of time. Unfortunately, the record in this matter supports the DOE psychiatrist's conclusion that the individual was habitually using alcohol to excess as late as 2001. DOE Exhibit 8 at 14, 15, footnotes 10 and 11. During his evaluation, the DOE psychiatrist asked the individual what was the largest number of beers he has drank on a Saturday.

> He replied "10-12." I asked him, "How many times in the last year have you drank 10-12 beers on a Saturday?" He replied, "Five to ten." I then asked [the individual] to define "intoxication" . . . [and] asked him "How many drinks does it take for you

> to get intoxicated by [your] definition?" He replied, "Twelve plus beers."I then asked him, "How many times in the past year do you think you were intoxicated by [your] definition?" He replied, "8-10 times."3/

Based on the information presented to him, the DOE psychiatrist concluded that the individual "is a user of alcohol habitually to excess and suffers from alcohol abuse and in addition is in the early stages of alcoholism (alcohol dependence)." DOE Exhibit 8 at 30. He further found that this condition causes or may cause a significant defect in the individual's judgement and reliability. As support for this finding, the DOE psychiatrist cited the individual's statements to him that in the previous year, the individual had driven a motor vehicle after consuming 13 drinks, and on eight to ten other occasions had driven after consuming eight to ten beers over a five to six hour period. DOE Exhibit 8 at 28-29. The individual testified that he has never been arrested for any alcohol-related traffic offense. Tr. at 45. However, given the preceding information, this appears to be more the result of good fortune than of the exercise of sound judgement by the individual. I agree that this behavior demonstrates a significant defect in the individual's judgement, and I conclude that the DOE psychiatrist's findings are adequately supported by the record in this proceeding.

To the individual's credit, I am convinced that he has remained abstinent since June 2002. However, this falls far short of an adequate showing of rehabilitation or reformation. In his evaluation, the DOE psychiatrist stated that, in order to adequately demonstrate rehabilitation or reformation, the individual would have to complete a professionally-led substance abuse treatment program or regularly attend Alcoholics Anonymous meetings while completely abstaining from alcohol use for at least two years, or, if no outside intervention is obtained, he would have to completely abstain from alcohol use for at least three years. DOE Exhibit 8 at 28. This the individual has not done.

In his letter, the individual's psychiatrist states that, given the individual's limited drinking at present, he believes that "mandating a rehabilitation program is probably excessive . . ." Individual's Exhibit 22 at 1. However, the individual's psychiatrist does not contest the DOE psychiatrist's diagnosis, nor does his letter set forth any specific course of action that he believes the individual should follow. Moreover, the DOE psychiatrist's evaluation does not "mandate" any rehabilitation program. It merely sets forth an expert opinion as to what the individual would have to show in order to demonstrate rehabilitation or reformation. Indeed, according to the DOE psychiatrist, the individual could show reformation without undergoing a rehabilitative program by demonstrating abstinence from alcohol use for at least three years. 4/ I further note that the individual's psychiatrist

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3/ At the hearing, the individual testified that the alcohol consumption figures he gave during the PSI and the DOE-sponsored psychiatric evaluation were "a little bit overestimated due to the fact that I didn't want to underestimate and lie." Tr. at 47. However, he did not provide revised consumption amounts, nor, more importantly, independent corroboration of those allegedly lower amounts.

4/ At present, assuming the testimony on the individual's behalf to be correct, and assuming continued

(continued...)

did not testify at the hearing, and was therefore unavailable for questioning. For these reasons, I attribute little weight to the individual's psychiatrist's letter. I conclude that the individual has not rebutted the DOE psychiatrist's conclusions, that he has not adequately demonstrated rehabilitation or reformation from alcohol abuse, and that he has therefore failed to successfully resolve the DOE's security concerns under paragraphs (h) and (j).

IV. Conclusion

As explained in this Opinion, I find that the information presented by the individual does not adequately address the DOE's security concerns. Based on the record in this proceeding, I am therefore unable to conclude that granting the individual access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted access authorization.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: April 8, 2003

4/ (...continued)
sobriety since the hearing, he has abstained from alcohol use only for a period of 10 months.