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March 12, 2003

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September, 2002

Case Number: VSO-0580

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 should be not be granted an access authorization.

Background

The individual is employed by a contractor at a DOE facility, and his employer has requested that he have an access authorization. The local DOE security office issued a Notification Letter to the individual on June 6, 2002. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a clearance, based upon disqualifying criteria set forth in section 710.8, paragraphs (f), (k), and (l).

The Notification Letter states that the individual deliberately misrepresented, falsified or omitted significant information from a security form he submitted to DOE in June 1986. The information the individual admittedly omitted from that form concerns his use of marijuana and hashish [hereinafter collectively referred to as "cannabis"] between 1970 and 1973. The individual volunteered the information about his past cannabis use in a Personnel Security Interview conducted in December 2001. Submission of false information on the 1986 security form raises a security concern under Criterion F.

The Notification Letter also states that the individual's possession and use of methamphetamine, a controlled substance, many times during the period June 1999 until March 2001, when he was hospitalized for chemical dependency treatment, raises a security concern under Criterion K.

In addition, the Notification Letter states that the individual's actions raise concerns that he 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. These are the actions described in the Notification Letter with respect to Criterion L: (1) the individual's submission of inaccurate information about the nature and extent of his past cannabis use on a June 1986 DOE security form, (2) his possession and use of methamphetamine during the period June 1999 until March 2001, (3) his use of unemployment compensation to purchase methamphetamine during the period March 1999 through May 2000, (4) his use of methamphetamine to avoid thinking of his financial problems, and (5) his failure to attend Alcoholics Anonymous or Narcotics Anonymous sessions after completing his chemical dependency treatment.

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 one witness: the DOE personnel security specialist who evaluated the individual. The individual was not represented by counsel; he testified on his own behalf, and called four other witnesses: three current or former coworkers, friends who were acquainted with his personal life, and his wife. The DOE submitted 18 written exhibits, and the individual submitted two written exhibits.

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 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." See, e.g., *Personnel Security Hearing* (Case No. VSO-0013), 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 CFR § 710.7(a). For the reasons discussed below, it is my opinion that the individual has not resolved the doubts raised in this case and therefore should not be granted access authorization.

Findings of Fact

The individual had an access authorization for more than a decade, until he left his former job with a DOE contractor in 1995. See Transcript of Personnel Security Interview (PSI) in December 2001 (hereinafter cited as "*PSI Tr.*") at 52; DOE Hearing Exhibits 2, 3; Hearing Transcript (hereinafter cited as "*Tr.*") at 17. During the next six years, from 1995 into 2001, the individual worked outside the DOE complex and he did not have a clearance. He came back to work at the DOE facility when he got his present job in mid-2001, and applied for reinstatement of his access authorization. The individual voluntarily reported the derogatory information about his methamphetamine use on personnel security questionnaires he submitted in July 2001, DOE Hearing Exhibit 8. During the December 2001 PSI, the individual admitted that he submitted inaccurate information about his cannabis use in the early 1970s on a 1986 personnel security form, and that he used methamphetamine from June 1999 until March 2001, when he was hospitalized for chemical dependency treatment.

The drug concern in this case is unusual because the individual reported derogatory information about his methamphetamine use, but the local DOE security office did not refer him for evaluation by a consultant psychiatrist. Thus lacking any expert medical opinion, I will have to use my experience as a Hearing Officer and apply the factors in section 710.7(c) to evaluate the evidence and make a common sense judgment whether the individual has mitigated the security concerns in the Notification Letter. As the DOE Counsel aptly framed the issue: "DOE has a question as to whether the treatment is sufficient mitigation, whether enough time has elapsed since [the individual's] problem to ensure that he will not reoffend." *Tr.* at 8.

Based on the evidence in the record, I find that the individual last used methamphetamine in February 2001, 23 months before the hearing, *Tr.* at 29, 36, and entered treatment in March 2001,

22 months before the hearing, DOE Hearing Exhibit 17 (the individual's medical records from the treatment facility). ^{1/}

With respect to the individual's submission of false information about past cannabis use on his 1986 personnel security questionnaire, I make the following findings of fact. The individual did not tell the truth when he gave a negative answer to Question 11 on the 1986 security form, which asked "Are you now or have you been a user of [cannabis]?" See DOE Hearing Exhibit 4. Subsequently, the questions about past drug use in DOE personnel security forms were changed. In the early 1990s, the security questionnaire asked if the applicant had used drugs within the five years immediately before submitting the form. By then, the individual's youthful cannabis use was 20 years in the past, and he could have truthfully given a negative answer to the drug question the way it was phrased. Nevertheless, the individual could have voluntarily disclosed his cannabis use in the early 1970s but he did not do so from submission of the 1986 form until 1995 when he left the DOE complex, and no longer had a clearance. From 1995 through mid-2001, the individual was out of the system, and had neither the opportunity nor the obligation to confess his submission of false information on the 1986 security form. When the individual came back into the DOE personnel security system in mid-2001, he disclosed the information about his methamphetamine use on his July 2001 personnel security questionnaire. However, Question 24 on the July 2001 security questionnaire asked about illegal drug use "Since the age of 16 or in the last 7 years, whichever is shorter," which did not cover the individual's cannabis use in the early 1970s. See DOE Hearing Exhibits 7 & 8. It was not until the December 2001 PSI that the individual volunteered that he had submitted false information on his 1986 security questionnaire. *PSI Tr.* at 147.

These findings of fact serve as the point of departure in considering whether the individual has mitigated the security concerns arising from his methamphetamine use during the period June 1999 until March 2001, and whether he has mitigated the concerns stemming from his failure to disclose past drug use on the DOE security form he submitted in 1986.

Testimony of the Witnesses

The DOE Personnel Security Specialist

The security specialist explained the nexus between the facts and the security concerns in the Notification Letter. She pointed out that the individual's submission of false information about his cannabis use in the early 1970s on the security questionnaire he submitted in 1986 raised lingering questions about his honesty. She also explained how the individual's methamphetamine use during the period June 1999 until February 2001 raised questions about his judgment, reliability and vulnerability to coercion. See *Tr.* at 11-14. In the individual's favor, she noted that the individual

^{1/} In his opening statement at the hearing, the DOE Counsel indicated that 18 months had passed since the individual sought treatment. *Tr.* at 8. As noted above, however, the record shows the individual entered treatment approximately 22 months before the hearing.

voluntarily informed DOE of his submission of false information on the 1986 security form during the December 2001 PSI, rather than being caught in a lie. *Tr.* at 14.

With respect to the individual's methamphetamine use, the security specialist noted that her local DOE security office has "general guidelines on the period of time that a former drug user must be clean before we accept their word that they will not use drugs," and "that period of time is two years." *Id.* at 15. However, she also conceded that "Guideline H: Drug Involvement," in the "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968," reproduced in Appendix B to Part 710, does not state that an individual needs two years of abstinence to mitigate a security concern about drug use.

The Individual

At the hearing, the individual began by recounting the events that led to his fateful encounter with methamphetamine in 1999. He left the DOE facility where he had worked for over a decade in 1995, and went to work for a private firm in a nearby town. He met his current wife through a Christian dating service in 1997. *PSI Tr.* at 53. She lived in a city a few hours drive away from the individual, where she operated an elder care business that was experiencing financial problems. In 1998, the individual began taking Prozac for mild depression. After his wife was injured in an auto accident, the individual decided he would quit his job, move to his wife's city, and help her try to save that business. *Tr.* at 20. When the individual arrived in his wife's city, he realized the elder care business was failing. He no longer had health insurance, he stopped taking his antidepressants, and "as all that was going downhill and we were headed toward bankruptcy I was introduced to methamphetamine" by an acquaintance. *Id.*

The individual described how he became depressed from going off Prozac and his financial problems, and how he binged on methamphetamine, sometimes for more than two days in a row. *See PSI Tr.* at 73-81. According to the individual, "I just did the methamphetamine and, uh, kind of stayed in my own little world," for close to a year. *Id.* at 82. The longest he went without it "was probably about five days." *Id.* at 83.

In early 2000, the individual's last employer called up and asked him if he wanted a job. The individual "realized at the time that ... I had narrowly escaped death." *Id.* at 85. He gratefully accepted the offer, and they moved back to the town he left in 1998. According to the individual,

At the time I thought, well, I'll just get away from [methamphetamine] and I could just leave that behind me. It didn't quite work out that way. Actually, as deep as I had been involved in the methamphetamine use, I needed some help. So I was still hounded by it, and I dreamed about it and it was terrible.

Tr. at 21. Later in the fall of 2000, the individual was offered a position at a new plant being constructed by his employer in a distant part of the country. The individual saw this as an opportunity for advancement, and "an opportunity to get further away from that negative sphere of influence," referring to the city where he was introduced to methamphetamine. *Id.*

After the individual and his wife moved across the country to his new job site, and even though the individual had been off the methamphetamine for months, he contacted an acquaintance from the city where he was introduced to the drug, and had that person mail some methamphetamine to him. When the methamphetamine arrived, the individual binged on it for four days straight. He testified that he does not remember the last couple of days, except for his wife begging him to stop. Finally, the individual fell asleep. When he woke up a day later, the individual realized that “I didn’t want to live like that anymore, so I called up my employer and told him exactly what had happened and what I had been doing and the problem that I had.” *Id.* at 22. According to the individual and his wife, this was in February 2001. *Id.* at 29, 36. The employer paid for the individual’s drug rehabilitation treatment program. ^{2/} *Id.* at 23.

The individual described the way he felt when he began treatment: “I remember the first day there sitting around looking at the people that I was there with, trying to figure out how on earth I got myself there.” *Id.* When I asked him to explain what he meant, the individual said that only a few years earlier, he was deeply involved in a church in the town he left to move to his wife’s city, and “never would have thought that I ever would have been in a situation that I wound up being in.” *Id.* The individual “felt a lot of embarrassment,” and was “pretty upset with [himself] for having allowed [himself] to go down that path that put him there,” with a bunch of “hard core druggie types.” *Id.* at 23-24. According to the individual:

But I had to come to grips with the fact that I did belong there because of what I had done, so I accepted that. But it was hard at the same time to be every day going back and identifying with those people, but although in retrospect I would say that’s probably one of the stronger point of the treatment program for me personally was to see that environment and face that.

Id. at 24.

The individual added that he had always prided himself on being honest, especially since he started becoming involved in his church. He admitted when he was younger

I did make a falsification on that security questionnaire in ‘86, so I wasn’t always [honest]. You know, I was still young. Looking back on it now I wish that I had always been forthcoming and honest. But you know, I can’t change that. All I can do is live my life from here on out as I believe is proper, and that is being honest and faithful to my commitments.

Id. at 25.

^{2/} Although the employer’s employee assistance program recommended an in-patient program, the individual entered an outpatient program instead because he did not want to leave his wife alone for three weeks. According to the individual, they had just moved across the nation, they lived out in the country, and his wife did not know very many people. *Id.* at 23.

Coming out of the treatment program, the individual realized that he and his wife “didn’t belong” in the state to which they had moved, having no family members or friends there. He applied for a job back at the DOE facility he had left in 1995. When he filled out the DOE security questionnaire in 2001, the individual “turned himself in.” *Id.* at 26. According to the individual, “I decided that regardless of what the consequences were going to be, that I was going to be honest with everyone concerning the problems that I had had. Everybody out at work that I know, they know what I went through.” *Id.* The individual told people about his drug addiction because

I feel personally that to hide something gives that thing a certain amount of power over your life, and didn’t want that hanging over my head anymore. So I wouldn’t give it that power. I would be honest, and being honest, I could live with that, regardless of what the consequences were. So out of respect for myself and what I believe in and how I want to live as far as my conscience goes, and then out of respect for my friends and coworkers, I just thought it was appropriate that they know what I have been involved in.

Id. at 27.

When I asked the individual why he got involved with methamphetamine, he replied, “I didn’t go out looking for it. It just wound up there were some people that were at our house and they had it there, and to this day I wish I hadn’t accepted their offer to try it.” *Id.* at 28. The individual said that once he tried it, “at the time it made me forget about the mess that I was in and it just delayed me from facing, so I chose to go hide in a hole with methamphetamine rather than face the difficulties that we had and trying to deal with it, which was just a terrible mistake.” *Id.* at 28-29.

The individual also addressed DOE’s concern about his failure to attend Alcoholics Anonymous or Narcotics Anonymous sessions after completing treatment for chemical dependency. He said that he had gone to a few aftercare meetings in the state where he had the treatment, but had “found that going to those meetings made me rehash all the mistakes that I had made, and it just made it to where I would be hard on myself for days on end afterwards. So those meetings were like a reminder to me of those idiotic things I had done.” *Id.* at 30. The individual conceded that his decision not to continue with aftercare “probably doesn’t fit the accepted medical mold,” but thought “it definitely feeds into my depression...rather than getting on with my life and doing positive things again.” ^{3/} *Id.* The individual emphasized that what he wanted to do after treatment was to put that part of his life behind him and get back to the life he had lived for the most part, “and that was being a successful technician.” *Id.* The individual and his wife are now actively involved in his old church. *Id.* at 31, 38.

The Individual’s Character Witnesses

^{3/} The individual submitted a recent note from his doctor which states that the individual is on Prozac, his symptoms of depression are well-controlled, and that the individual is medically stabilized. *Id.* at 33.

The individual called three character witnesses who had worked with him at the DOE facility at one time or another during the past 20 years. The co-workers testified that they knew the individual to be an excellent worker, that they knew about his two-year bout with methamphetamine addiction before his return to the DOE facility, and that they had never noticed any drug-related problems with the individual on the job. *Id.* at 40-53. One of the witnesses testified that his own son has a drug problem, and he could tell whether someone was using drugs. *Id.* at 51-52. All three witnesses told the DOE Counsel they would report it immediately and “take corrective action” if they ever thought the individual was using drugs, but they were confident that would never happen again. The witnesses who also socialized with the individual corroborated his claim that he has never used drugs since he returned to the area in 2001.

The Individual’s Wife

The individual’s wife, a licensed practical nurse, testified that she has had eight years of experience working on a chemical dependency unit in a hospital. She thought the individual has “done really well” since he last used methamphetamine and entered treatment for substance dependence approximately two years before the hearing. *Id.* at 37. The individual’s wife admitted that she had tried methamphetamine herself, but stated that she did not have problems with the drug like her husband had. *Id.* She speculated that the individual’s mild depression (untreated at that time) made him more susceptible to the drug, but she is confident that his addiction was an aberration in his life, and that he will never use methamphetamine again. *Id.* at 38. The individual’s wife corroborated the individual’s testimony that he gave up drugs in February 2001, and she corroborated the individual’s testimony about his renewed relationship with his church and his motivation to remain drug-free. *Id.* at 35-38.

Analysis

There are two pivotal questions in this case: (1) whether the individual has mitigated the concerns arising from his methamphetamine use from June 1999 until March 2001, and (2) whether the individual has mitigated the concerns arising from his submission of false information about cannabis use 30 years ago on a 1986 security questionnaire. It is a close call on the methamphetamine issue, but I find that the individual has shown strong mitigating evidence that leads me to conclude that after two years of abstinence, he is rehabilitated and reformed, and is unlikely ever to use illegal drugs again. However, the individual has failed to mitigate DOE’s security concerns about his submission of false information on his 1986 security questionnaire, particularly because he maintained the falsehood until the December 2001 PSI. I have therefore concluded that this individual should not be granted access authorization.

Concerns about the Individual’s Methamphetamine Use

Improper or illegal involvement with drugs raises questions regarding an individual’s willingness or ability to protect classified information. Drug abuse or dependence may impair social or

occupational functioning, increasing the risk of an unauthorized disclosure of classified information. In this case, however, I am convinced that the individual's self-confessed descent into the underworld of methamphetamine dependence for a 20-month period was an aberration, significantly out of character with the rest of his life experience, from which he is rehabilitated and reformed, and which he will never again repeat.

Since the information about the individual's bout with methamphetamine was self-reported, and there is no current medical opinion directly assessing his rehabilitation or reformation, I have analyzed the evidence under the standard set forth in 10 CFR § 710.7(c). Applying those factors to the individual, I find that his conduct was serious in nature, but its extent was limited to the 20-month period noted above. The circumstances surrounding the conduct involved an unfortunate constellation of many things going wrong at the same time in the individual's life, and although the individual "didn't go out looking for it," once he was introduced to methamphetamine, his use of the drug was knowledgeable and frequent. He was a mature adult at the time, and his participation was beyond voluntary, it was compulsive. Taken as a group, the foregoing factors in § 710.7(c) weigh against the individual because they delineate the basis for DOE's security concerns.

However, when I consider the next several factors in § 710.7(c), I find that this individual is genuinely rehabilitated and reformed, that he is strongly motivated and has changed his behavior to avoid drug use for the rest of his life, and that his openness about his drug problem has eliminated the potential for exploitation of any kind. In my years as a hearing officer in DOE's personnel security program, I have seen many individuals who claimed to have overcome a substance abuse problem and to have been rehabilitated or reformed. This individual stands out from the crowd in several ways. First, his methamphetamine use was limited to a 20-month period; this behavior was an aberration for man whose prior drug use was limited to youthful cannabis experimentation 30 years ago. It was not part of a longtime pattern. Second, the individual himself recognized that he was in trouble, turned himself in, and sought help through his employer, even though it meant jeopardizing his career with that company. Third, the way in which the individual describes his feelings when he began treatment and confronted the horrible reality that he had become a drug addict rings true to me. This individual's words are personal and sincere; they are not the party line from a rehabilitation program that he has intoned in a belief that it will make himself sound good to the DOE. Fourth, the individual has remained abstinent for two years, and made many changes in his life to put that era firmly in the past, and avoid drug use in the future. These changes include moving back to his former homeland, returning to the DOE facility where he worked for many years, getting involved again in his former church, being completely honest with DOE and his friends and colleagues about his bout with methamphetamine, and admitting his submission of false information on a security form 17 years ago about cannabis use 30 years ago, even though those disclosures have led him into the present administrative review process. The individual has also sought medical treatment for his mild depression, and is once again taking the proper prescription medication to manage that condition. Although it defies conventional wisdom in the drug treatment community, the individual has a good reason why he stopped going to aftercare. The conventional approach is not always appropriate in a given case, and I am convinced that aftercare clearly was not therapeutic for this individual. In short, I believe this individual has done virtually everything he can to reform

his behavior and ensure that he will never use drugs again. I believe the risk of relapse is very slight. Thus, I find that the individual has mitigated the concerns in the Notification Letter under Criterion K, and the concerns under Criterion L that relate to his methamphetamine use during the period June 1999 through February 2001.

Concerns about the Individual's Falsification

Conduct involving questionable judgment, untrustworthiness, lack of candor, or dishonesty could indicate that an individual may not properly safeguard classified information. The individual submitted false information about his cannabis use 30 years ago on his 1986 security questionnaire. He testified that he was still young at the time, and that he now wishes he had always been forthcoming and honest. When the individual came back to work at the DOE facility in July 2001, he decided that regardless of the consequences, he was going to be honest with everyone concerning the problems he had with methamphetamine. Taken literally, the time period covered by the drug use question on the July 2001 security form ("Since the age of 16 or in the last 7 years, whichever is shorter") did not include the individual's cannabis use in the early 1970s, although he had the opportunity to reveal it then. He did not admit submitting false information on his 1986 security form until the PSI, six months later in December 2001, only 13 months before the hearing. At that point, the individual had let the false information stand uncorrected for approximately 15 years. Even if one were to reduce that number by subtracting the six years when he was out of the DOE personnel security system, the individual still maintained the lie for about a decade. I commend the individual for coming forward voluntarily during the PSI and admitting he gave false information on his 1986 security questionnaire. Admitting his past falsehood and accepting the consequences of his actions is certainly an important step in the process of reformation. But it does not automatically mitigate the security concerns under Criteria F and L about this individual's honesty, reliability and trustworthiness. It is only a subsequent pattern of honesty and responsible behavior that can abate the security concerns that arise from a lengthy prior pattern of dishonest behavior. It is a difficult decision because there is strong evidence that the individual has turned his life around, but I find that he has not as yet shown a long enough period of honesty to mitigate the concerns stemming from his prior pattern of dishonesty about a matter that goes to the heart of his eligibility for access authorization. *Compare Personnel Security Hearing* (Case No. VS0-0013), 25 DOE ¶82, 752 (1995) (13-month period subsequent to covering up use of illegal drugs did not constitute a sufficient pattern of honest behavior) *with Personnel Security Hearing* (Case No. VSO-0410), 28 DOE ¶ 82,786 (2001), *affirmed* (OSA March 21, 2001) (eight years of honest behavior was sufficient evidence that the individual had reformed).

Conclusion

Based on the entire record in this proceeding, I find that the individual has resolved the security concerns under 10 CFR § 710.8(k) and (l) raised by his use of methamphetamine during the period from June 1999 until March 2001. However, I also find that the individual has failed to resolve the security concerns under 10 CFR § 710.8(f) and (l) raised by his submission of false information regarding his past cannabis use on his 1986 personnel security questionnaire. For the reasons

explained in this Decision, I find the individual has failed to show that granting him 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 should not be granted access authorization 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: March 12, 2003