

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Opinion of the Director

Name of Case: Personnel Security Review

Date of Filing: June 14, 2002

Case Number: VSA-0479

This Opinion considers a Request for Review and Statement of Issues filed by XXXXXXXXXXXXXXXXXXXX (the individual) concerning his eligibility for access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I do not recommend restoration of the individual's request for access authorization.

I. Background

The events leading to the instant Request for Review are fully set forth in a decision issued by an Office of Hearings and Appeals (OHA) Hearing Officer. Personnel Security Hearing (Case No. VSO-0479), 28 DOE ¶ 82,857 (2002). I will not reiterate all the details of that case here. For purposes of the instant security review, the relevant facts are as follows.

A DOE Operations Office learned of certain derogatory information about this individual, which related to his eligibility for continued access authorization in connection with his employment at a DOE facility. That Office issued a Notification Letter to the individual, citing derogatory information that falls within 10

1/ 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 from time to time in this Opinion as access authorization or security clearance.

C.F.R. § 710.8(j) [hereinafter Criterion J]. 2/ The Notification Letter cited the diagnosis of a DOE consultant psychiatrist (the psychiatrist) that the individual was suffering from alcohol dependence without evidence of rehabilitation or reformation.

The Hearing Officer convened a hearing in order to provide the individual with an opportunity to resolve the concerns regarding his eligibility for access authorization. At the hearing, the DOE called the consultant psychiatrist as a witness. The individual offered his own testimony and that of a psychologist, a deputy sheriff, two supervisors and two family members.

II. Opinion of the Hearing Officer

The Hearing Officer determined that the Criterion J concerns had not been resolved. He noted the psychiatrist's diagnosis of alcohol dependence. He also cited the psychiatrist's view that the individual would need an abstinence period of five years in order to achieve rehabilitation. In reaching his determination, the Hearing Officer found the individual's stated eight-month period of abstinence from alcohol to be relatively short. The Hearing Officer cited two other factors that caused him to conclude that the individual was not rehabilitated. The first was the individual's "grudging willingness to admit that he has or had an alcohol problem." 28 DOE at 86,005. The other factor was the individual's failure to create and implement a formal after-care plan. The Hearing Officer concluded that given the individual's limited period of abstinence, his limited acceptance of his alcohol problem and the lack of a formalized after-care plan, there was not sufficient evidence of rehabilitation. 28 DOE at 86,005-06. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

III. Statement of Issues and Response

Pursuant to 10 C.F.R. § 710.28(b), the individual filed a statement setting forth the focal issues in the review phase of this proceeding (hereinafter referred to as "Statement of Issues," or "Statement"). In the Statement, the individual requests that I consider the following arguments: (i) the Hearing Officer improperly adopted the psychiatrist's diagnosis that the individual suffered from alcohol dependence and not alcohol abuse; (ii) the

2/ Criterion J refers to information that the individual has "been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

Hearing Officer incorrectly determined that the individual would need a five year period of abstinence in order to be considered rehabilitated; and (iii) a letter prepared by the psychologist and submitted along with the Statement establishes that the individual has now formalized an aftercare plan.

The Office of Personnel Security Administrative Staff indicated that it did not wish to submit additional information in this case.

IV. Standard of Review

Part 710 provides that if, after considering all the factors in light of the relevant criteria, the Director of the Office of Hearings and Appeals is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to an individual, he shall render an opinion favorable to the individual; otherwise, he shall render an opinion adverse to the individual. 10 C.F.R. § 710.28(d).

As a rule, the Hearing Officer is responsible for considering the demeanor and credibility of witnesses. 10 C.F.R. § 710.27(b). He also assesses the appropriate weight to be given to their testimony. Absent some error, I will not supplant my judgment for that of the Hearing Officer in such matters. Personnel Security Review (Case No. VSA-0084), 26 DOE ¶ 83,004 (1996), aff'd (OSA December 31, 1996). As discussed below, I will not reverse the Hearing Officer's decision in this case.

V. Analysis

After reviewing the Statement of Issues, I cannot conclude that the security concerns have been resolved.

I will first consider the contention that the Hearing Officer improperly decided the individual was alcohol dependent, rather than suffering from the less severe condition of alcohol abuse. In this regard, the individual points to the testimony of his psychologist for support. He notes that the psychologist stated that after his first interview with the individual, he made a diagnosis of alcohol abuse. Transcript of Hearing (Tr.) at 87.

This contention indicates a misreading of the record. The psychologist clearly testified that the abuse diagnosis was based on the limited information that he had at the time of his first interview with the individual. However, the psychologist testified that after he obtained additional information about the individual, he changed his diagnosis to alcohol dependence. Tr. at 87, 88, 99. Thus, the two mental health experts involved in this case agree

that this individual suffers from alcohol dependence. Accordingly, I find no error by the Hearing Officer on this issue.

The Statement also contends that the Hearing Officer erred in determining that a five-year abstinence period was necessary in order to establish that the individual was rehabilitated from alcohol dependence. In support of this position, the Statement refers to the testimony of the psychiatrist to the effect that there is no medical certainty on the issue of how long an abstinence period is necessary for a person who is alcohol dependent to achieve rehabilitation. 3/

As an initial matter, the Statement has mis-focused the issue. The point here is not the precise length of the abstinence period necessary, and whether experts can say with utter assurance if an alcohol-dependent person is rehabilitated. Experts generally recognize the inherent difficulties and uncertainties associated with curing alcohol disorders. 4/ Rather, the key here is whether the individual has provided reasonable assurance that he is rehabilitated from his alcohol dependence. One of the important elements in that regard is establishing a suitable abstinence period. Tr. at 91. As discussed below, I do not believe he has made this showing.

Moreover, in asserting that the Hearing Officer erred in finding a five-year abstinence period necessary in this case, the individual has misread the Hearing Officer's Opinion. The Hearing Officer did not specifically state the length of the abstinence period necessary here. He noted the five-year abstinence period that the psychiatrist believes is necessary. The Hearing Officer then stated that during the past five years the individual had not had any alcohol-related incidents. Nevertheless, the Hearing Officer

3/ The psychiatrist testified that as a rule he believed the persons with alcohol dependence should maintain abstinence from alcohol for a five-year period in order to show rehabilitation. Tr. at 32.

4/ In fact, the psychologist testified that it is difficult to gauge whether a person suffering from alcohol dependence is rehabilitated. For example, in responding to a question about whether the individual was "cured," the psychologist stated: "I would have to say that if he follows the plan as he has roughly outlined, that he has a very good possibility, *hedge, hedge, hedge* of maintaining full sustained remission. . . . We are not clairvoyant. And we always hedge ourselves because humans don't always tell the truth. . . ." Tr. at 101-02 (emphasis added).

concluded that the current abstinence period of eight months was "limited." 28 DOE at 86,006.

I am in complete agreement with the Hearing Officer. It is not the role of the Hearing Officer in these personnel security cases to establish an appropriate rehabilitation program for an individual whose behavior has raised a security concern. Rather, the individual seeking access authorization must bring forth evidence to establish that he is fit to hold a security clearance. 28 DOE at 86,002-03. With regard to his abstinence, the individual has not brought forward such evidence. There is no evidence in this case to suggest that the eight-month abstinence period was sufficient. Even the individual's own psychologist was not willing to state with any conviction that this period was adequate to establish rehabilitation. Tr. at 101-02. When asked if he would find the individual rehabilitated from his alcohol dependency problem after eight months of abstinence, the psychologist stated "he is in the norm of people who are well on the road to long-term stability and. . . continued remission." Tr. at 111.

This rather cautious, circuitous response certainly does not squarely support the individual's position that an eight-month abstinence period is adequate in this case. It does not at all convince me that the psychologist firmly believed the individual's eight-month abstinence period was sufficient. Thus, the individual has not brought forward persuasive evidence that his eight-month period of abstinence satisfies the abstinence component of the rehabilitation necessary in this case.

The Hearing Officer pointed out two other components of a rehabilitation program for the individual: (i) a recognition by the individual that he has an alcohol problem and (ii) the implementation of and adherence to an aftercare plan. 28 DOE at 86,006.

The record indicates that as of the date of the hearing, the individual had not achieved either of these two elements. The Hearing Officer amply cited the testimony of the individual indicating that he has not internalized the fact that he has a significant alcohol problem. 28 DOE at 86,005-06. In his letter accompanying the Statement of Issues, the psychologist contends that this reluctance to admit to an alcohol problem is due to the individual's "social stereotype belief that alcohol dependence would mean inability to function." This assertion, even if true, does not persuade me that the individual has gained the appropriate insight into his alcohol dependence to satisfy this aspect of his rehabilitation.

With respect to the third element of the individual's rehabilitation, as cited by the Hearing Officer, an aftercare component, the psychologist states in his letter that the individual has now formalized an aftercare plan, and is adhering to it. If true, this is commendable. However, the psychologist's statement is only a general one. It does not describe the plan. I am therefore unable to make even the most basic assessment of its efficacy. Further, although the psychologist states that the individual is adhering to the plan and maintaining his abstinence, I have no corroboration for these assertions. The psychologist's statement is therefore of limited probative value and is entitled to little if any weight.

In sum, based on the evidence before me, I am not persuaded that the individual has resolved the security concerns associated with his alcohol dependence.

VI. Conclusion

As indicated by the foregoing, I cannot conclude that continuing this individual's access authorization will not endanger the common defense and security and will be clearly consistent with the national interest. Accordingly, it is my opinion that the individual's request for access authorization should not be restored. 10 C.F.R. § 710.28(d).

The regulations specify that within 30 days of receipt of this opinion, the Director, Office of Security Affairs, will make a final determination regarding the individual's request for access authorization, based upon a complete review of the record. 10 C.F.R. § 710.28(e). The Director, Office of Security Affairs, shall through the Director, Office of Safeguards and Security, inform the individual in writing of the final determination, and provide a copy of the present opinion. Copies of the correspondence shall be provided to the Director, Office of Hearings and Appeals, the Manager, DOE Counsel and any other party. In the event of an adverse determination, the correspondence shall indicate findings by the Director, Office of Security Affairs, with respect to each allegation contained in the Notification Letter. 10 C.F.R. § 710.28(f).

George B. Breznay
Director
Office of Hearings and Appeals

Date: