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**United States Department of Energy**  
**Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing )	
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Filing Date:	July 16, 2013 )	Case No. PSH-13-0090
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Issued: October 23, 2013

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**Hearing Officer Decision**

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Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) 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.”<sup>1</sup> For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

**I. BACKGROUND**

The Individual is employed by a DOE contractor and currently holds a suspended DOE access authorization. DOE Exhibit (“Ex.”) M. In April 2012, the Individual was arrested for Driving Under the Influence (DUI) of Alcohol, which he reported to the Local Security Office (LSO) in June 2012 upon notification that he had been formally charged with the offense.<sup>2</sup> DOE Ex. C (June 21, 2012, Incident Report). This information prompted the LSO to request that the

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<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

<sup>2</sup> In the June 21, 2012, incident report, the Individual explained that he did not report the April 2012 arrest sooner because it was “unclear” to him whether he had, in fact, been arrested that evening since he was not taken to jail or informed of any charges filed against him at that time. DOE Ex. C. Rather, the arresting officer transported the Individual to a hospital after the Individual agreed to provide a blood sample for a blood-alcohol test and, upon completion of the test, the officer drove the Individual home. *Id.* The Individual was notified by mail on June 20, 2012, that he had been formally charged with DUI and other related offenses. *Id.*

Individual participate in a Personnel Security Interview (PSI) in January 2013. DOE Ex. 8. After the PSI, the Local Security Office (LSO) referred the Individual to a DOE consultant-psychiatrist (“the DOE psychiatrist”) for an evaluation. The DOE psychiatrist evaluated the Individual in May 2013, and issued a report in June 2013. DOE Ex. L. In July 2013, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8(j) (Criterion J).<sup>3</sup> See DOE Ex. N (Notification Letter, July 1, 2013). The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced fourteen exhibits into the record (DOE Exs. A-N) and presented the testimony of one witness, the DOE psychiatrist. The Individual submitted three exhibits and presented his own testimony, as well as the testimony of two witnesses: his fiancée and a substance abuse counselor who evaluated the Individual for the purposes of preparing a report of evaluation and providing testimony during this proceeding. See *Indiv. Exs. 1-3*; Transcript of Hearing, Case No. PSH-13-0090 (hereinafter cited as “Tr.”).

## II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including “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,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable . . . .” 10 C.F.R.

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<sup>3</sup> Criterion J relates to conduct indicating 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).

§ 710.7(a). In order to reach a decision favorable to the individual, the Hearing Officer must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

### III. FINDINGS OF FACT

The Individual began consuming alcohol in 2002, at age eighteen, typically drinking beer with friends. DOE Ex. J at 45-46. During the PSI, the Individual provided a detailed account of his drinking history since 2002. He reported that he generally drank five to ten beers over several hours, becoming intoxicated. *Id.* at 48. Based on the Individual’s account, the quantity of alcohol that he consumes on a typical drinking occasion has remained relatively unchanged over the years, but the frequency of those occasions has decreased over time.<sup>4</sup> *Id.* at 47-51. Since he began drinking in 2002, the Individual has been involved in a number of legal incidents in which alcohol was a factor. He was cited for “underage drinking” in May 2003, at age eighteen, and for “disorderly house” in May 2006 and in April 2007. *Id.* at 33, 38, 40. Each citation resulted from local police responding to complaints regarding a party that was either hosted by the Individual or at which he was a guest. Alcohol was served at each of those parties. *Id.* at 33-42. In addition to the three citations, the Individual received a code of conduct violation during his junior year of college, after he and his roommates were found to be in possession of alcohol during a room inspection, in violation of the applicable housing rules. Tr. at 82.

In April 2012, the Individual spent an afternoon with coworkers and friends, during which he drank ten or eleven beers over a four- to five-hour period, while tailgating at a local sporting event and then dining at a local restaurant. DOE Ex. J at 13-15. The Individual had planned to attend a house party that evening with two other friends, but one of the friends – the designated driver – chose not to go. *Id.* at 15-16. Rather than change his plans to account for the missing designated driver, the Individual chose to drive to the party himself, despite having spent the afternoon drinking. *Id.* at 16- 17. The Individual remained at the party for several hours, where he continued to drink, and then decided to drive himself and his friend home. *Id.* at 17. At approximately 3:30 a.m., the Individual was pulled over by a police officer for speeding. After failing the field sobriety tests, the Individual was transported to a local hospital for a blood test to determine his blood alcohol content (BAC).<sup>5</sup> *Id.* at 19-23. In June 2012, the Individual was notified by mail that he was formally charged with DUI and other related charges. DOE Ex. C. He also learned that, based on the results of the blood test, his BAC on the night of his arrest was 0.222, nearly three times the legal limit of 0.08. *Id.*; DOE Ex. J at 20. Ultimately, the Individual

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<sup>4</sup> The Individual estimated that, from 2002 to 2006, while attending college, he consumed alcohol three times per week. *Id.* at 47. After college, the frequency of his drinking decreased to two to three times per week from 2006 to 2008, and once a week from 2008 to 2010. *Id.* at 50. From 2010 to 2012, the Individual drank “two times monthly on average.” *Id.* at 51.

<sup>5</sup> The police criminal complaint indicates that the Individual’s blood test took place at 4:05 a.m., approximately twelve hours after the Individual first began drinking and approximately one hour after he stopped drinking, based on the Individual’s account of events preceding his arrest. See DOE Exs. C, D.

was accepted into an accelerated rehabilitative disposition (ARD) program, a pre-prosecution probation program available to first-time offenders in his state. DOE Ex. F. The Individual's probation carried several conditions, among them that he remain abstinent from alcohol for the duration of the program. DOE Ex. L at 4. However, the Individual admitted to drinking on two occasions while on probation. *Id.*

After evaluating the Individual, the DOE psychiatrist diagnosed him with "Alcohol Abuse Disorder." DOE Ex. L at 8. The DOE psychiatrist based the diagnosis on the Individual's April 2012 DUI arrest, his history of alcohol-related legal incidents, noted above, and his drinking while in the ARD program, in violation of one of the terms of his probation. *Id.* In addition, the DOE psychiatrist opined that the Individual was a user of alcohol "habitually to excess" based on the Individual's self-reports of the frequency and quantity of his alcohol consumption. *Id.* at 9. The DOE psychiatrist noted in his report that habitual excessive drinking is problematic because "regular alcohol consumers . . . have a greater risk of problems related to alcohol use including medical . . . legal, social, occupational, and psychiatric (e.g. depression, irritability, insomnia, interpersonal problems, *and impaired judgment*)." *Id.* (emphasis added).

#### **IV. THE NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS**

As stated above, the LSO issued a Notification Letter identifying security concerns under Criterion J of the Part 710 regulations. DOE Ex. N. In support of its Criterion J concerns, the LSO cited the Individual's pattern of alcohol consumption, his 2012 DUI arrest, his history of other alcohol-related incidents, and the DOE psychiatrist's diagnosis. *Id.* It is well-established that excessive use of alcohol raises security concerns because "excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines, Guideline G, ¶ 21. In this case, given the facts regarding the Individual's history of excessive alcohol consumption, particularly the events precipitating his 2012 DUI arrest, there is ample information in the record regarding the Individual's excessive alcohol consumption that raises valid security concerns. Therefore, I find that the LSO properly invoked Criterion J.

#### **V. ANALYSIS**

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to find that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

At the hearing, the Individual acknowledged that there had been occasions in the past when he abused alcohol, but he disagreed with the DOE psychiatrist's diagnosis of Alcohol Abuse Disorder, maintained that he did not have any alcohol-related condition necessitating treatment, and attempted to establish at the hearing, through his own testimony and that of his witnesses, that his alcohol consumption in general was not of concern. Tr. at 80, 110.

The Individual stated that he drinks socially with friends, drinking “on average . . . about seven or eight beers . . . in a four- to five-hour window.” Tr. at 87. He added, “if you do the math there . . . it’s basically about two beers an hour. And, yes, it brings you up to the point of intoxication, right at the point of intoxication, at 0.08. Okay? And that’s kind of where I say . . . you know, when I drink, yeah. I mean, I probably am drunk. I’m at the point of intoxication. Not really above it. Not like, you know, where I got my DUI.” Tr. at 87. The Individual does not believe that he meets the criteria for Alcohol Abuse Disorder because alcohol has not interfered in his life, and he has not “had any issues in life” due to his drinking. Tr. at 93-94. In addition, the Individual denies that alcohol has ever impaired his judgment, other than the night of the April 2012 DUI. Tr. at 120.

With respect to the college code of conduct violation and the 2003, 2006, and 2007 legal citations, the Individual did not dispute that the underlying incidents took place. Rather, he offered explanations for each incident which either minimized his involvement or downplayed the role of alcohol in the incident itself. Tr. at 82-85. Similarly, the Individual acknowledged his poor judgment which led to his April 2012 DUI arrest. However, he explained that his behavior on that occasion was “not a normal occurrence.” Tr. at 85. According to the Individual, on the day of his DUI arrest, he “probably” reached the “higher limits” of how much he drinks. Tr. at 85. In addition, he “even drank it a little quicker than usual,” and he “continued to drink [after tailgating] and [went] on to this party, which is not normal.” *Id.* Finally, he contended that he does not generally “stay out for 12 hours at a time.” Tr. at 86. According to the Individual, the combination of these factors made for an “atypical” day. Tr. at 87.

The Individual noted that he completed the terms of the ARD program, including participation in required alcohol education courses, attendance at three Alcoholics Anonymous meetings, and payment of a fine, and that he was released from probation early. Tr. at 98, 123; *see also* *Indiv. Ex. 1*. However, he acknowledged that abstinence from alcohol was also a term of his ARD probation, which he violated by consuming alcohol on two occasions during the probationary period. Tr. at 123. He further admitted that his probation officer, the district attorney, and the court were unaware that he violated one of the terms of his probation when he petitioned for, and was granted, early release from the ARD program. However, the Individual downplayed his probation violation, and maintained that he would likely have been granted early release despite his violation. Tr. at 123-127. The Individual alleged that, despite the abstinence requirement, someone told him at the outset of his participation in the ARD program that, “really what it comes down to is, you know, your probation officer doesn’t really care. They just – they want to see that you don’t have any alcohol-related incidents.” Tr. at 126. He added that, in retrospect, he wished he had not violated his probation so that it would not have been an issue during the PSI and the DOE psychiatrist’s evaluation. Tr. at 127-28.

Regarding his future intentions toward alcohol, the Individual does not plan to stop consuming alcohol, but he does intend to be more careful in his drinking. Tr. at 108. He does not plan to seek treatment for alcohol abuse at this time. Tr. at 111. However, he stated that he attended the required alcohol education courses with “a learning mindset,” and he learned some information that has helped him. Tr. at 95. The Individual maintains that he has “somewhat” reduced his alcohol consumption, now “probably drinking . . . eight beers in five hours.” Tr. at 106.

The Individual's fiancée corroborated the Individual's testimony that he only drinks socially. Tr. at 71. However, her testimony regarding the quantity of alcohol that the Individual consumes differed from the Individual's account. She testified that the Individual now drinks "maybe . . . two to four, five drinks," far fewer than the eight drinks that the Individual reported during his testimony.<sup>6</sup> Tr. at 72. According to the fiancée, the Individual has become "a lot more cautious" with respect to his alcohol consumption, and drinks less frequently. Tr. at 71-72. She stated that the Individual's DUI arrest and its aftermath "made him really aware that . . . he does need to be careful." Tr. at 72. She testified that the Individual does not intend to abstain from drinking in the future, but he is more aware that he can drink in moderation and he plans to "keep [his consumption] to a minimum." Tr. at 77.

The substance abuse counselor testified that, after evaluating the Individual, he concluded that he did not currently meet criteria for an alcohol-related disorder. Tr. at 13; *see also* Indiv. Ex. 3 (August 2013 Report of Evaluation). However, the counselor opined that the Individual's history and experiences with alcohol were of "some concern," and, therefore, it was "important" that the Individual "be very careful" with respect to his alcohol consumption in the future. Tr. at 13. The counselor testified that he did not diagnose the Individual with Alcohol Abuse Disorder due to the lack of recurring alcohol-related incidents within the previous twelve months. *Id.* He added, however, that if he had evaluated the Individual closer in time to the April 2012 DUI arrest, rather than over one year later, he would have recommended that the Individual seek outpatient treatment for alcohol abuse. Tr. at 22. The counselor testified that, since the April 2012 DUI arrest, the Individual had made "significant changes" in his "lifestyle" and his "relationship to alcohol" because he prioritized his relationships and his career. Tr. at 14. However, the counselor was unable to give specific examples of the "significant changes" the Individual has made, stating instead he "just got a general sense that, you know, drinking was not that important" to the Individual, and that the Individual "did not seem to be so attached" to alcohol. Tr. at 24.

The DOE psychiatrist disagreed with the substance abuse counselor's opinion that the Individual did not meet the criteria for an Alcohol Abuse Disorder diagnosis, noting that the counselor did not consider the Individual's entire history of excessive alcohol consumption and related incidents. Tr. at 46. In contrast, in diagnosing the Individual with Alcohol Abuse Disorder, the DOE psychiatrist considered a number of factors, including the Individual's history of alcohol consumption since 2002, which has been "fairly intense and regular," and his five alcohol-related "legal consequences," the most recent of which – a DUI arrest following a twelve-hour period of drinking – occurred in April 2012. Tr. at 38-39. The DOE psychiatrist also considered the Individual's driving after drinking "a couple of times a year," which he described as "very problematic" regardless of whether the person is arrested or there is an accident, and the Individual's statement that he had experienced a number of blackouts due to excessive drinking in the past. Tr. at 39-40. Taken together, these factors were serious enough that the DOE psychiatrist felt the Alcohol Abuse Disorder was appropriate, even though the Individual had not

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<sup>6</sup> Because the Individual and his fiancée provided contradicting accounts regarding the quantity of alcohol that the Individual consumes, there is little corroborated evidence in the record regarding the Individual's current alcohol consumption. However, for purposes of this decision, I have assumed that the Individual's testimony regarding his own consumption - that he currently consumes, on average, eight beers over a five-hour period – is the more accurate account.

had any new alcohol-related incidents within twelve months of his evaluation. *Id.* The psychiatrist considered the Individual's drinking while on probation significant because it was an indication that the Alcohol Abuse Disorder diagnosis from the earlier period of misuse of alcohol, dating back to the 2012 DUI arrest, had "persisted in the current 12 months." Tr. at 44, 52. He added that this was significant not only because it demonstrated that the Individual violated a legal condition imposed on him, but also because it raised questions regarding his judgment. Tr. at 44-45. The DOE psychiatrist opined that there have been consequences to the Individual's drinking significant enough that "one would expect he would have tapered his alcohol use in frequency or severity, but that had not occurred as vigorously as one might expect." Tr. at 39.

The DOE psychiatrist also opined that the Individual consumed alcohol habitually to excess. Tr. at 40. In making this finding, the DOE psychiatrist used as a benchmark the standards set forth by the U.S. Department of Health and Human Services and National Institute on Alcohol Abuse and Alcoholism, which indicate that men should not consume "more than four standard alcohol drinks in a day, or 14 alcohol drinks in a week." Tr. at 40; *see also* DOE Ex. L at 9. He added that the Individual had "obviously exceeded that regularly over a period of years." *Id.*

The DOE psychiatrist recommended that the Individual be abstinent from alcohol "because he hasn't learned how to drink appropriately," given that he drinks to intoxication every time he drinks. Tr. at 42. He also recommended that the Individual seek alcohol abuse treatment "to learn to be able to drink appropriately, because if he's going to go back to drinking five to ten beers, even if it's once a month . . . that's a high risk for him . . . He needs to work on the quantity of [his] drinking." Tr. at 66-67. In that regard, the DOE psychiatrist opined that the Individual did not yet demonstrate adequate evidence of rehabilitation from his diagnosis of Alcohol Abuse Disorder. *Id.*

Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," that "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." Adjudicative Guidelines, Guideline G, ¶ 23.

In the present case, upon consideration of the evidence in the record, I find that the Individual has not mitigated the security concerns cited in the Notification Letter. As an initial matter, the Individual has disputed the DOE psychiatrist's diagnosis of Alcohol Abuse Disorder, and the record contains conflicting opinions from the DOE psychiatrist and the substance abuse counselor regarding the Individual's diagnosis. The DOE psychiatrist articulated the basis for

his diagnosis, which he supported with specific facts, he considered the entirety of the Individual's history and experiences with alcohol, and he appeared to have had a better-developed record upon which to base his conclusions. Conversely, the substance abuse counselor considered only the 12-months preceding his evaluation of the Individual in rendering his opinion, gave more general and speculative statements to explain his conclusions, and appeared to have been provided less information upon which to perform an evaluation. Given these facts, I was persuaded by the DOE psychiatrist's opinion that the Individual meets the criteria for Alcohol Abuse Disorder, and has not demonstrated adequate rehabilitation from the condition. Moreover, notwithstanding his disagreement regarding the diagnosis, even the substance abuse counselor expressed reservations regarding the Individual's alcohol consumption similar to those of the DOE psychiatrist.

Considering the evidence in the record before me, I share the reservations of the two experts. The Individual has refused to acknowledge that his pattern of alcohol consumption is of serious concern. Consequently, he has taken no steps to address issues related to his alcohol consumption, other than those required of him in order to resolve the criminal charges resulting from his April 2012 DUI arrest. He has instead consistently attempted to either rationalize drinking habits that he believes are harmless, or to minimize the impact of his alcohol consumption.<sup>7</sup> The Individual expressed remorse for his April 2012 DUI arrest, but adamantly attributed the incident to an anomalous lapse in judgment, rather than a predictable eventual consequence of his habitual excessive alcohol consumption. However, the Individual's assertion that his behavior preceding the DUI arrest was simply a lapse in otherwise good judgment is belied not only by the facts established in the record that (1) he usually drinks to intoxication on the occasions that he consumes alcohol and (2) has driven after drinking on a number of other occasions. These facts, together with his dangerous behavior underlying the DUI arrest – consuming enough alcohol to reach a BAC of 0.222, nearly three times the legal limit, and then driving – raise serious concerns regarding the Individual's judgment with respect to his use of alcohol.

Given the presence of the Individual's untreated Alcohol Abuse Disorder, together with his lack of insight into the impact of alcohol on his life, the absence of his participation in any significant alcohol abuse treatment or education, his stated intention to continue drinking, and a barely perceptible decrease in his alcohol consumption, I cannot conclude that the concerns raised by the Individual's pattern of excessive alcohol consumption have been resolved such that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Therefore, I find that the Individual has not resolved the Criterion J concerns cited in the Notification Letter.

## **VI. CONCLUSION**

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<sup>7</sup> Though the record is replete with examples of such behavior, one example that was of particular concern in this proceeding was the Individual's reliance on "the math" of estimating BACs – calculations regarding the number of drinks consumed relative to the amount of time over which the alcohol was processed by the body. The Individual maintained several times throughout the hearing that, even on occasions when he consumed several drinks over a number of hours, "the math" established that he was not "as intoxicated as you may think . . ." Tr. at 86-87.



Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criterion J of the Part 710 regulations. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: October 23, 2013