

not presented sufficient evidence to mitigate DOE's concerns arising from his falsifications. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of

the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
N.Y. City Health & Hospital .....	RC272-00396 RJ272-00067	11/24/98

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**DEPARTMENT OF ENERGY**

**Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 16 Through November 20, 1998**

During the week of November 16 through November 20, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: March 15, 1999.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*

**Decision List No. 112 Week of November 16 Through November 20, 1998**

*Appeals*

*Alan Henney, 11/17/98, VFA-0454*

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) received a request from the Department of Commerce asking DOE to provide a direct response to part of an Appeal filed by Alan Henney under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. OHA dismissed this Appeal. Under 10 CFR § 1004.8(a) of the DOE regulations, OHA does not have jurisdiction to adjudicate this matter, because there is no evidence that the decision to withhold documents in response to Mr. Henney's FOIA request was made by a DOE officer who has custody or responsibility for these records under the FOIA. Moreover, under 10 CFR § 1004.7(b), a legally sufficient denial of records under the FOIA has not been issued. OHA requested the FOIA/Privacy Act Division of the Office of the Executive Secretariat (DOE FOIA Office) to treat the Appeal as if it were a new request for documents under the FOIA.

*Ruth Towle Murphy, 11/17/98, VFA-0453*

The OHA denied an Appeal of a determination issued by the DOE's Office of Scientific and Technical Information in response to a request for a fee waiver. The requester claimed that her status as a graduate student, and her intention to incorporate the requested information into research for a dissertation, was sufficient to qualify her for a waiver of search and copying fees. The OHA found that the requester failed to show that she could disseminate the requested information to a broad enough audience to qualify for a fee waiver.

*Personnel Security Hearing*

*Personnel Security Hearing, 11/16/98, VSO-0216*

An Office of Hearings and Appeals Hearing Officer issued an Opinion under 10 CFR Part 710 concerning the continued eligibility of an individual to hold an access authorization. The Hearing Officer found that the individual had failed to establish the truthfulness of his explanation for receiving a positive test result for the presence of cocaine metabolite in a urine sample provided by the individual pursuant to a random drug screening conducted by his employer. The Hearing Officer found that the individual had therefore failed to mitigate the legitimate security concerns of DOE relating to the use of illegal drugs. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Mercer County et al .....	RF272-96900	11/18/98
Raymond Canada et al .....	RC272-00395 RJ272-00066	11/19/98

**Dismissals**

The following submissions were dismissed.

Name	Case No.
Carl Buddig & Co .....	RF272-95207
Glendale Union HS Dist 205 .....	RF272-80846
Personnel Security Review .....	VSA-0214
S.A.D. #51 .....	RF272-80837

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**DEPARTMENT OF ENERGY**

**Notice of Issuance of Decisions and Orders by The Office of Hearings and Appeals; Week of November 9 Through November 13, 1998**

During the week of November 9 through November 13, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: March 15, 1999.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*

**Decision List No. 111 Week of November 9 Through November 13, 1998**

*Appeals*

*Frank E. Isbill, 11/10/98, VFA-0450*

Frank E. Isbill (Isbill) filed an Appeal from a determination issued to him by the Oak Ridge Operations Office (OR) of the Department of Energy (DOE). In his Appeal, Isbill asserted that OR failed to conduct an adequate search for documents, requested pursuant to the FOIA, that pertained to various personnel records and complaints at the DOE's Office of Scientific and Technical Information (OSTI). After reviewing the search that was conducted for responsive documents, the DOE determined that OR had performed an adequate search. In reaching this determination, DOE also held that records held by two contractors at OSTI were not agency records subject to the

FOIA nor were they subject to the DOE's policy on contractor records. Consequently, Isbill's Appeal was denied.

*Ashok Kaushal, 11/13/98, VFA-0452*

DOE denied an appeal of a determination issued by the Albuquerque Operations Office (DOE/AL). OHA found that the search conducted by DOE/AL was reasonably calculated to uncover material responsive to the request.

*Tammi D. Mourfield Selvidge, et al., 11/12/98, VFA-0449*

Tammi D. Mourfield Selvidge, et al., filed an appeal from a denial by the Oak Ridge Operations Office of a request for information that it filed under the Freedom of Information Act (FOIA). The DOE upheld a determination by Oak Ridge that no documents existed that were responsive to the request for a list of 100 specified substances. The DOE referred the appeal of denial of access to classified information to the appropriate office in the Office of Security Affairs, to be addressed in Case No. VFA-0451. The DOE did not address the remaining issues raised in the appeal because Oak Ridge had not yet issued complete determinations regarding them. Accordingly, the appeal was denied in part and dismissed in part.

*Personnel Security Hearings*

*Personnel Security Hearing, 11/9/99, VSO-0219*

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because the DOE obtained derogatory information that the individual was alcohol dependent. At a hearing convened at the individual's request, the individual maintained that he was rehabilitated from alcohol dependence. A DOE consultant psychiatrist found that the individual was in full remission from his alcohol dependence and had shown adequate evidence of rehabilitation. Other witnesses corroborated that the individual had not used alcohol for more than one year and that he was committed to his rehabilitation program. Based on this evidence, the Hearing Officer found that the individual had

mitigated the DOE's concern regarding his alcohol dependence. Accordingly, the Hearing Officer recommended that the individual's access authorization be restored.

*Personnel Security Hearing, 11/13/98, VSO-0226*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to be granted access authorization under the provisions of 10 CFR Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer first found that the individual has a mental condition which causes or may cause a significant defect in his judgment or reliability. The Hearing Officer also found that the individual has been a user of alcohol habitually to excess and had been diagnosed by a board-certified psychiatrist as alcohol dependent. This finding was based on the DOE consultant psychiatrist's diagnosis of alcohol dependence and opinion that there was insufficient evidence of rehabilitation and reformation. The individual's Employment Assistance Program counselor agreed with the DOE consultant psychiatrist that the individual was alcohol dependent and not yet rehabilitated. Accordingly, the Hearing Officer recommended that the individual not be granted access authorization.

**Dismissals**

The following submissions were dismissed.

Name	Case No.
Apex Oil Co./Clark Oil Co./Albert Burzinski.	RF342-00328

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**DEPARTMENT OF ENERGY**

**Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of October 26 Through October 30, 1998**

During the week of October 26 through October 30, 1998, the decisions and orders summarized below were