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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 6, 2012 ) Case No.: PSH-12-0082  
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Issued: October 22, 2012

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**Decision and Order**

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Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. As part of a routine re-investigation in 2010, the individual was the subject of an Office of Personnel Management (OPM) background investigation. Because this investigation revealed information that raised security concerns, the local security office (LSO) summoned the individual for interviews with a personnel security specialist

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<sup>1</sup>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 also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov> . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

in May 2010 and January 2011. After reviewing the transcripts of these Personnel Security Interviews (PSI) and the rest of the individual's personnel file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual of this determination in a letter that set forth 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 concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced nine exhibits into the record of this proceeding. The individual introduced two exhibits and presented the testimony of two witnesses, in addition to testifying himself.

## **II. DEROGATORY INFORMATION AND THE DOE'S SECURITY CONCERNS**

Except as otherwise noted, the following facts are undisputed, and are derived from a DOE Polygraph Report (DOE Exhibit (DOE Ex.) 3), military discharge documents (DOE Ex. 4), Questionnaires for National Security Positions (QNSP) executed by the individual in January 2010 and October 2004 (DOE Exs. 5 and 6, respectively), and the individual's January 2011 (DOE Ex. 7) and May 2010 (DOE Ex. 8) PSIs.

The individual was honorably discharged from active service in the United States armed forces in June 2004. He subsequently served in the military reserve until his discharge in December 2005. According to his military reserve discharge papers, he was discharged under "Other than Honorable Conditions," for "misconduct of [*sic*] drug abuse," with the notation "Not recommended for Re-enlistment or Reaffiliation." However, the individual claims that he was never disciplined for illegal drug usage in either the active military or the military reserve, and he submitted a communication that he received from the military indicating that he was being given a General Discharge (Under Honorable Conditions) from the military reserve because of 12 unexcused absences from duty. Individual's Exhibit 1.

In December 2004, the individual was hired by his current employer and was granted access authorization. In the QNSP that he completed in October 2004 as part of the security clearance process, he responded "no" to questions 24(a), (b) and (c), which asked, respectively, whether he had illegally used drugs in the last seven years or since the age of 16, whether he had ever used illegal drugs while in a position directly and immediately affecting the public safety, and whether he had been involved in purchasing or transferring illegal drugs in the previous seven years. The

individual was reinvestigated in 2010. In his January 2010 QNSP, he responded “no” to questions 23(a), (b) and (c), which inquired as to whether he had illegally used drugs in the last seven years, whether he had ever used illegal drugs while in a position directly and immediately affecting the public safety, and whether he had been involved in purchasing or transferring illegal drugs in the previous seven years, respectively. After the individual’s military discharge papers had been obtained, an OPM investigator questioned the individual in March 2010 about any illegal drug usage while he was in the military. The individual stated that he had not used illegal drugs, nor been the subject of any disciplinary actions while in the military.

In an attempt to resolve the discrepancy between the discharge papers and the individual’s statements, the individual was summoned for PSIs in May 2010 and January 2011. During the May 2010 PSI, the individual was asked again whether he had ever been involved in the usage, transferral, or sale of illegal drugs, and he replied that he had not. He was also given the opportunity to correct or update any information that he had provided during his January 2010 QNSP, and he declined to do so. During the January 2011 PSI, the individual repeatedly denied having any involvement with illegal drugs during his time in the active military or military reserves. However, later in the interview, the individual admitted taking a “couple of puffs” of marijuana while in the military reserve during a 2004 party in Philadelphia, and to using marijuana as a teenager. Nevertheless, he continued to maintain that he had not been subject to any disciplinary actions while in the active military or in the reserve, and that he was discharged from the military reserve because of his unexcused absences from his weekend reserve duties.

Because the LSO determined that discrepancies remained between the individual’s statements and his military records, it offered him an opportunity to resolve those discrepancies by taking a polygraph examination, and the individual agreed to the examination. During his pre-examination interview in June 2011, the individual revealed that, while on active military duty, he had smoked marijuana on “three or four” occasions, and purchased marijuana on “maybe” two occasions within the seven-year periods of time covered by his 2004 and 2010 QNSPs. One of those purchases occurred in 2003, when he paid \$125 for marijuana for the purpose of reselling it. He sold \$40 worth of the drug, and gave the remainder to a friend to resell, with the understanding that the two would split the proceeds of the sale. However, the friend later claimed that he was robbed, and never paid the individual for the marijuana. The individual further stated that he smoked marijuana twice during the summer of 2004 after his discharge from active duty. When reminded that he had stated during his January 2011 PSI that he had smoked marijuana during a 2004 party in Philadelphia, he admitted that there was no party, and that he had fabricated that story because the interviewer would not accept the fact that he could not remember the details. He said that his last usage of illegal drugs was in August 2004. During the polygraph examination, the individual was asked if he was “knowingly

hiding any adult illegal drug activity,” other than that discussed during his pre-examination interview. The examination results indicated that he was not withholding further information.

In the Notification Letter, the LSO determined that this derogatory information raises valid security concerns under paragraphs (f) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.<sup>3</sup> I agree with this conclusion. Conduct involving questionable judgement, lack of candor, or dishonesty, especially during the security clearance process, can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline E.*

### **III. REGULATORY STANDARDS**

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 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 granting or restoring a 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 the 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

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<sup>3</sup> Under criterion (f), information is derogatory if it indicates that the individual “has deliberately misrepresented, falsified or omitted significant information from . . . a Questionnaire for Sensitive (or National Security) Positions, . . . a personnel security interview, [or] written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . . .” 10 C.F.R. § 710.8(f). Criterion (l) defines as derogatory information indicating that the individual has “engaged in any unusual conduct or is subject to any 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.” 10 C.F.R. § 710.8(l).

DOE that granting or restoring access authorization “will not endanger the common defense and security and will 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. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### **IV. FINDINGS OF FACT AND ANALYSIS**

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, he attempted to demonstrate, through his testimony and that of two of his co-workers, that he is now an honest and trustworthy person who can be relied upon to safeguard classified information or special nuclear material.

During his testimony, the individual attempted to explain the discrepancies in his representations to the DOE. Regarding his answers to the questions about illegal drug usage on the 2004 QNSP, the individual testified that the QNSP “is a long form,” and that the questions weren’t “entirely read to the best of my ability at that time.” Hearing Transcript (Tr.) at 13. He indicated that he did not believe that he was providing false information by responding “no” to those questions. *Id.* He did not report his drug usage during his 2005 OPM investigation interview, he said, because he “was so much past [the drug usage] or any of those situations, it wasn’t easy to remember.” Tr. at 14. He stated that he did not remember telling the OPM investigator in March 2010 that he had not used illegal drugs while in the military. Tr. at 17. Concerning his answers to the questions about illegal drug involvement on his 2010 QNSP, he similarly testified that he did not believe that he was falsifying information by responding “no.” He explained that he believed that his answers were truthful because “he wasn’t a drug addict,” and that “those situations” were in his past. Tr. at 15-16. He gave similar justifications for his false answers during his May 2010 and January 2011 PSIs concerning his illegal drug involvement, adding that he didn’t intend to provide false information on those occasions. Tr. at 19. It was important for him to put these occurrences behind him, he continued, because he perceived them as being part of a disadvantaged upbringing which included abuse and neglect, illegal drug usage by both parents and by associates, his father’s incarceration, and periods of homelessness. Tr. at 7-8, 26, 31. He was irresponsible and immature during the period of his drug involvement while in the military, he added, but he has “grown a lot since then,” to the point where he is now supervises others and regularly protects classified information without incident. Tr. at 32. The individual’s co-workers testified generally that he is honest and reliable person who has performed his duties admirably. Tr. at 38-54.

After reviewing this testimony and the record as a whole, I find that some of the assertions made by the individual at the hearing are simply not credible. As an initial matter, the individual claimed that he did not knowingly and intentionally provide false information to the DOE concerning his illegal drug involvement, despite the fact that on at least five occasions over a period of approximately six and one-half years, he was asked, under penalty of perjury, clearly-worded questions, in oral and written form, about whether he had used or sold illegal drugs, and he uniformly and falsely indicated that he had not. During his 2010 and 2011 PSIs, he was repeatedly given a chance by his questioners to “come clean” about his illegal drug involvement, and he declined to do so. Although he did state during the 2011 PSI that he used marijuana during a party in Philadelphia in 2004, he later admitted that he fabricated this story because the Personnel Security Specialist did not believe his assertion that he did not remember his illegal drug usage. It was only under the threat of a looming polygraph examination in 2011 that the individual revealed the extent of his illegal drug involvement. A more deliberate and considered attempt to conceal relevant information from the DOE can hardly be imagined.

Furthermore, the individual attributed his failure to reveal his 2004 marijuana usages and his 2003 marijuana sales to the OPM investigator in 2005 to a faulty memory. The interview with the investigator occurred in April 2005, approximately nine months after the individual’s last admitted usage of marijuana in August 2004. It strains credulity to believe that an apparently healthy individual could forget about his illegal drug involvement in so short a period of time.

Moreover, even if I found the individual’s testimony to be credible, I would be unable to conclude that he has adequately addressed the DOE’s concerns regarding his reliability and trustworthiness. In previous cases involving falsifications or deliberate omissions, OHA Hearing Officers have considered the following factors in determining whether the falsifier or ommitter has demonstrated adequate evidence of reformation: whether the individual came forward promptly and voluntarily to correct his falsification, *see Personnel Security Hearing*, Case No. VSO-0037 (1995), *see also Adjudicative Guideline E*; the length of time the falsehood was maintained; whether a pattern of falsification is evident; and whether a sufficient amount of time has passed since the falsification to permit the individual to establish a sustained pattern of honest behavior. *See, e.g., Personnel Security Hearing*, Case No. VSO-0327 (2000) (less than one year of truthfulness insufficient to overcome long history of long history of misstating professional credentials); *Personnel Security Hearing*, Case No. VSO-0289 (1999) (19 months since falsification regarding illegal drug usage not sufficient evidence of reformation).

In this case, the individual did not come forward promptly and voluntarily to correct his falsification. In fact, I harbor serious doubts as to whether the individual would ever have revealed the true extent of his illegal drug involvement in the absence of the polygraph examination. Moreover, even if the

individual had testified credibly at the hearing and had therefore been able to establish a 14-month pattern of honest behavior since he admitted the full extent of his illegal drug involvement in June 2011, given the six and one-half years during which the individual repeatedly and intentionally misled the DOE, I would still not be convinced that the chances of a return to his previous pattern of unreliability were sufficiently remote. For these reasons, I conclude that substantial security concerns remain under criteria (f) and (l) concerning the individual's honesty and reliability.

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has not successfully addressed the DOE's security concerns under criteria (f) and (l). I therefore conclude that he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: October 22, 2012