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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 26, 2012	)	Case No.:	PSH-12-0099
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Issued: November 2, 2012

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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.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted DOE access authorization. For the reasons detailed below, I find that the DOE should grant the Individual access authorization.

**I. BACKGROUND**

The Individual, a 57-year-old crane operator, is employed by a DOE contractor and previously held a DOE access authorization. DOE Exhibits (Exs.) 3, 4. In connection with his previous access authorization, the Individual completed a Personnel Security Questionnaire (PSQ) in 1985 and a Questionnaire for National Security Positions (QNSP) in 1992. DOE Exs. 19, 20. In 1996, the Individual’s access authorization was terminated.<sup>2</sup> DOE Ex. 18.

The Individual is again an applicant for DOE access authorization. As part of his current application, the Individual completed a QNSP in July 2011. DOE Ex. 18. After reviewing the Individual’s July 2011 QNSP, the Local Security Office (LSO) requested that the Individual participate in a November 2011 Personnel Security Interview (PSI) and referred him to a DOE

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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> The Individual listed the 1996 termination of his access authorization on his 2011 QNSP. DOE Ex. 18 at 31. The circumstances surrounding the termination remain unclear. The record of this proceeding contains no documentation or additional information regarding this issue.

consultant-psychologist (“the DOE Psychologist”) for an evaluation.<sup>3</sup> DOE Ex. 4, 21. After reviewing the Individual’s complete personnel security file, the LSO informed the Individual in a June 2012 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (f) and (l) (Criteria F and L, respectively). *See* Notification Letter, June 8, 2012. 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. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed as Hearing Officer. At the hearing, the Individual presented his own testimony, as well as the testimony of five friends and co-workers. The Individual also submitted one exhibit (Indiv. Ex. A). The DOE counsel presented no witnesses, and submitted 21 exhibits into the record (DOE Exs. 1-21). *See* Transcript of Hearing, Case No. PSH-12-0099 (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. *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. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be 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

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<sup>3</sup> After evaluating the Individual, the DOE Psychologist concluded that, while the Individual may have met the criteria for an alcohol-related condition in the past, he did not currently meet the criteria for any such condition. DOE Ex. 4 at 8.

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 AND ANALYSIS**

#### **A. Whether the LSO Properly Invoked Criteria F and L**

##### **1. The Individual’s History of Arrests and Citations**

The following facts regarding the Individual’s past arrests and citations are undisputed. The Individual has a history of legal incidents spanning nearly 40 years, beginning with arrests in 1971 for Auto Theft, Assault, and Residential Burglary, when the Individual was a juvenile, and non-judicial punishments for minor disciplinary offenses while in the military, also known as Article 15s, in 1972 and 1975. DOE Exs. 17, 20, 21. The Individual’s record also includes arrests for Driving While Intoxicated in December 1982, March 1984, August 1986, April 1994, December 1995, January 2002, and September 2002. DOE Ex. 21. In addition, the Individual was arrested for Possession of Hashish while stationed overseas with the military in 1975, Aggravated Assault with a Firearm in 1979, and Possession of Less than One Ounce of Marijuana in 1982. DOE Ex. 20, 21. The Individual’s record also includes two arrests related to domestic violence: Battery in 1986 and Abuse of a Child in 1996. DOE Ex. 21. Finally, the Individual has been cited for a number of traffic-related offenses from 1982-1987, 2008, and 2010. DOE Ex. 21.

##### **2. The Individual’s Alleged Misrepresentations, Falsifications, or Omissions**

As Indicated above, the Individual completed a PSQ in 1985 and QNSPs in 1992 and 2011. DOE Exs. 18-20. The security questionnaires contain sections of questions specifically pertaining to an applicant’s police record. The PSQ asked whether the applicant has “ever been arrested, charged, or held by Federal, military, state, or other law enforcement or juvenile authorities.” DOE Ex. 20 (1985 PSQ, Part Two, Question Nine). In response to the question, the Individual answered “yes,” and listed all of his arrests to date. *Id.*

On the 1992 QNSP, one section of questions pertained to an applicant’s police record. DOE Ex. 19 (1992 QNSP, Part Two, Question 23). Specifically, the questions ask whether the applicant had “ever been charged with or convicted of any felony offense,” had “ever been charged with or convicted of a firearms or explosives offense,” currently had “any charges pending” for “any criminal offense,” had “ever been charged with or convicted of any offense(s) related to alcohol or drugs,” or “in the last 5 years . . . been arrested for, charged with, or convicted of any offense(s)” not previously listed in the section of questions. *Id.* In response, the Individual answered “no,” and explained “none since my last investigation, DOE has all records.” *Id.*

The “Police Record” sections of questions in the version of the QNSP that the Individual completed in 2011 is much more extensive than in the 1992 QNSP. DOE Ex. 18 at 25-28 (2011 QNSP, Section 22). First, in a section titled “Police Record,” the form inquires about various types of arrests, charges, and citations that an applicant may have incurred within the last seven

years. *Id.* at 25-27. Next, in a section titled “Police Record – EVER,” the form requires an applicant to list any arrests, charges, or citations that an applicant has incurred that are not listed in the previous section. *Id.* at 27. Finally, a section titled “Police Record – Summary,” the form restates the previous questions. In completing the Police Record section of the 2011 QNSP (Section 22), the Individual listed only one offense, a DWI arrest, estimating that the incident occurred in June 2002. *Id.* 25-28. However, in various “optional comments” areas within the Police Record section, the Individual stated that he provided information “to the best of [his] knowledge,” that he has “been arrested several times during [his] life,” and that he “suffered a stroke” in 2001 that resulted in memory loss and he could not remember the dates. *Id.*

### **3. The Notification Letter and Associated Security Concerns**

As stated above, after reviewing the Individual’s personnel security file, the LSO issued a Notification Letter identifying security concerns under Criteria F and L of the Part 710 regulations. *See* Notification Letter, June 8, 2012.

Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual’s eligibility for access authorization, including responses given during personnel security interviews or on security questionnaires. Such statements raise serious doubts regarding an individual’s honesty, reliability, and trustworthiness. 10 C.F.R. § 710.8(f); *see also* Adjudicative Guidelines, Guideline E, ¶¶ 15, 16(b) (“conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations,” to include “the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire,” raises security concerns); *Personnel Security Hearing*, Case No. TSO-0727 (2009).<sup>4</sup> Given that the Individual’s 1992 and 2011 QNSPs contain several omissions regarding his history of arrests, I find that the LSO properly invoked Criterion F.

Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l). In this case, the Criterion L concerns arise from the Individual’s alleged pattern of dishonesty, as well as his history of criminal conduct. *See* Adjudicative Guidelines, Guideline E; *see also Id.*, Guideline J, ¶ 30 (“Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” Given the Individual’s alleged dishonesty on his security questionnaires, discussed above, as well his history of arrests and citations, the LSO had ample grounds to invoke Criterion L.

### **B. Whether the Individual Has Mitigated the Security Concerns**

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<sup>4</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>.

## 1. Criteria F and L – The Individual’s Alleged Pattern of Dishonesty on QNSPs

The Individual’s alleged falsifications, omissions or misrepresentations on his 1992 and 2011 QNSPs form the basis of the security concerns regarding his honesty and trustworthiness. The Individual testified that he understands the importance of providing accurate information on the security questionnaires and he did not intentionally lie on his 2011 QNSP. Tr. at 122, 132. The Individual explained that he had a stroke in 2001 from which he mostly recovered, but which still impacts his life. Tr. at 82, 132; *see also* DOE Ex. 4 at 2-3, 11-12 (confirming that Individual had a stroke in 2001). He explained that he can generally function the same way he did prior to the stroke, but some tasks that used to come to him naturally now take him more time to accomplish. Tr. at 82. In addition, as a result of the stroke, he is prone to memory lapses when he is fatigued or under stress. Tr. at 82-83. Regarding his omissions on the 2011 QNSP, the Individual stated that completing the form was very stressful for him and, this contributed to his inability to remember specific information about the incidents in his past. According to the Individual, when it was time for him to complete the 2011 QNSP, he made an appointment with an administrative assistant at his place of employment that routinely helps laborers and other employees complete the form. Tr. at 87, 129-31. He told her that he had an arrest record, but could not remember any specific information about them. According to the Individual, the administrative assistant stated that she would help him look up his information using his social security number or other identifiers, but she was unable to locate any of the Individual’s criminal records.<sup>5</sup> Tr. at 129. In addition, the Individual made efforts to look up the information on his own using the internet, but was unable to locate any records regarding his arrests. Tr. at 154. Since he could not locate any of his records, but knew that he had other arrests in his past, the Individual listed on the form the one arrest that he remembered, a 2002 DWI arrest, and made sure to indicate that he had other arrests in his record, but did not remember the incidents or relevant dates. Tr. at 129. The Individual adamantly denied intentionally misleading the DOE or deliberately concealing information. Tr. at 159.

In addition to the Individual’s own testimony, there is ample testimony in the record from other witnesses regarding the Individual’s honesty and trustworthiness. Each of the Individual’s witnesses, all of whom are friends who have also worked with him and have known him for many years, testified that the Individual is very honest and reliable. Tr. at 17, 30, 46, 63, 77. They also testified that the Individual is a skilled crane operator who goes out of his way to understand the applicable workplace rules and regulations, and does his best to closely adhere to them. Tr. at 19, 32, 41, 56, 76. One of the Individual’s friends further testified that the Individual informed him that he tried to locate information regarding his past arrests but was unable to do so. Tr. at 33-34. Finally, the witnesses characterized the Individual as forthright and of high integrity. Tr. at 31-32, 45-46, 63, 80.

In evaluating the evidence before me, the Part 710 regulations direct me to consider, *inter alia*, “the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, [and] their credibility.” 10 C.F.R. § 710.27(b). Given the testimony regarding the Individual’s honesty and character, as well as my own observations of the

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<sup>5</sup> One of the Individual’s co-workers corroborated the Individual’s testimony that their employer has an administrative assistant who is available to assist employees in completing QNSPs. Tr. at 48.

Individual's demeanor and candor at the hearing, I find it very unlikely that the Individual deliberately attempted to conceal or withhold information on his 2011 QNSP. The Individual clearly indicated several times on the form that he was aware that he had past arrests, but could not remember specifics and was answering the questions to the best of his ability. DOE Ex. 18. In addition, I observed the Individual's struggles at the hearing to understand the meaning of certain questions, as well as to remember a significant amount of information regarding incidents in his past. I also observed that his ability to recall information improved when prompted by me or the DOE counsel with additional details from the record regarding certain incidents and that, in those instances, he was very candid and forthright in his answers. *See, e.g.*, Tr. at 157-58. Given these facts, I find that the Individual's omissions of his arrests and other citations on his 2011 QNSP were not "deliberate" falsifications of the form. *See Personnel Security Hearing*, Case No. PSH-12-0053 (2012) (an individual's omission of financial judgments on her QNSP resulted from negligent approach to completing the form, but were not deliberate attempt to conceal information); *Personnel Security Hearing*, Case No. TSO-0983 (2011) (lack of "the requisite element of 'deliberateness'" by individual in providing incorrect responses on security questionnaire sufficient to mitigate Criterion F concern). Therefore, I find that the Individual has mitigated the Criteria F and L concerns regarding his honesty and trustworthiness raised by the omissions on the 2011 QNSP.

In addition, I find that the Individual did not deliberately falsify his 1992 QNSP. The Individual testified that he did not remember even completing the form in 1992 and, therefore, he could not provide an explanation regarding any omissions or alleged falsifications of the form. Tr. at 144. However, a careful examination of the record leads me to conclude that any alleged falsification was the product of a misunderstanding of the pertinent question, rather than a deliberate attempt to conceal information from the agency. First, rather than simply answering "no" to the question regarding past arrests, the Individual explained that he did not have any "new" incidents since his last investigation and that DOE already had all of the information about his past arrests. DOE Ex. 19. While this is an incorrect response because the question does not specifically exclude incidents of which the agency is aware, it is not indicative of any intent to hide potentially negative information. Moreover, on his 1985 PSQ, the Individual did provide extensive details regarding his past criminal history to date. DOE Ex. 20. It is counterintuitive to conclude that, after being very forthright on the 1985 form, he would suddenly attempt to hide information from the DOE on a subsequent reinvestigation of his security clearance. It is more likely that he simply misunderstood the question. Nonetheless, to the extent that the incorrect or incomplete answers on the 1992 QNSP raised security concerns, I find that they have been mitigated by the passage of time. It is well-settled in previous cases of this office that where there exist security concerns attributable to irresponsible behavior, such as falsifications of security questionnaires or other forms of dishonesty, a subsequent pattern of responsible behavior is of critical importance in mitigating those concerns. *See, e.g., Personnel Security Hearing*, Case No. PSH-11-0017 (2012); *Personnel Security Hearing*, Case No. TSO-0568 (2008). In this case, notwithstanding the 2011 QNSP omissions, which I have found to be unintentional rather than deliberate attempts at concealment, the Individual has demonstrated a twenty-year period of responsible behavior since the 1992 omissions, including his established reputation in the workplace for truthfulness and compliance with rules and regulations, as noted above. Consequently, I find that the Individual has mitigated any Criteria F and L concerns arising from his alleged falsification of the 1992 QNSP.

## 2. Criterion L - The Individual's Past Criminal Conduct

As noted above, Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l). Specifically, criminal activity “creates a doubt about a person's judgment, reliability and trustworthiness.” Adjudicative Guidelines, Guideline J, ¶ 30.

In this case, the Individual did not dispute any of the arrests or citations in the Notification Letter, but did testify that he did not remember most of them. Tr. at 85. He did, however, testify about his criminal history to the best of his ability in response to direct questions from me and the DOE Counsel. Tr. at 85-121. The Individual acknowledged that in his past he engaged in immature, irresponsible, or risky behavior. Tr. at 150. However, an extended period of time has passed since he engaged in that type of conduct. In fact, although the Individual has a long history of arrests and traffic citations, his most recent serious incident – a DWI arrest – occurred in 2002, over ten years ago. Tr. at 86-87; *see also* DOE Ex. 14. According to the Individual, his life has changed dramatically in the intervening years. Tr. at 150-52. He stopped drinking to excess because he lost his father, saw his son die of a drug overdose, and has also known many people in his town who have died of alcohol-related complications over the years. Tr. at 150-51; *see also* DOE Ex. 4 at 5-6 (DOE Psychologist's report noting that Individual's father passed away in 1996 or 1997, and his son died in 2010). In addition, the Individual's stroke changed him and his outlook on life. Tr. at 151-52. He now leads a healthier lifestyle and wants to “make the most out of life and be good.” Tr. at 152.

Among the factors that may serve to mitigate security concerns raised by an individual's past criminal behavior are that the criminal conduct was not recent, is unlikely to recur, and there is evidence of rehabilitation. Adjudicative Guidelines, Guideline J, ¶ 32. In this case, the Individual's criminal conduct that raised the Criterion L security concerns is not recent behavior. Ten years have elapsed since the Individual's last arrest and two years have passed since his more recent, less serious traffic citation. Moreover, the Individual has experienced dramatic and life-altering changes over the last decade, including the loss of loved ones and a significant health scare, all of which have shifted the Individual's outlook on life. As a result, he currently leads a more settled and responsible lifestyle. These facts convince me that the Individual's criminal behavior is well in his past, is unlikely to recur, and does not currently cast doubt on his reliability, trustworthiness, or good judgment. *See Personnel Security Hearing*, Case No. PSH-12-0047 (2012) (individual mitigated security concerns related to two past arrests by demonstrating passage of seven and eleven years, respectively, since arrests and individual's maturity and insight into past behavior); *Personnel Security Hearing*, Case No. TSO-1053 (2011) (concerns raised by individual's past pattern criminal conduct mitigated by passage of ten years and individual's increased maturity and pattern of responsible behavior). Consequently, I find that the Individual has mitigated the Criterion L concerns raised by his past criminal conduct.

## IV. CONCLUSION

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 Criteria F and L of the Part 710 regulations. I further find that there is sufficient information in the record to mitigate those concerns. Therefore, I conclude that granting the Individual access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant the Individual 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: November 2, 2012