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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:	October 18, 2012)	
)	Case No.: PSH-12-0124
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Issued: January 14, 2013

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“the Individual”) to possess a Department of Energy (DOE) access authorization.¹ For the reasons detailed below, I find that the Individual’s suspended access authorization should not be restored.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility and held a security clearance. Exhibit (Ex.) 3 at 1. The Individual was selected to undergo a polygraph examination in April 2012. Ex. 3 at 1. In response to a polygraph question regarding whether he had ever mishandled classified materials, the Individual revealed that he had been involved in several incidents where security rules had been broken. Consequently, the local security office (LSO) conducted a personnel security interview (2012 PSI) with the Individual in August 2012 (2012 PSI). Ex. 8.

Because the 2012 PSI failed to resolve the concerns raised by the security incidents, the LSO informed the Individual, in a September 2012 notification letter (Notification Letter), that derogatory information existed under 10 C.F.R. §§ 710.8 (g) and (l) (Criterion G and L, respectively) that created a substantial doubt as to his eligibility to retain a security clearance. Ex. 1. The Notification Letter also informed the Individual that his security clearance was

¹ 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.

suspended and 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. At the hearing, the DOE counsel introduced five exhibits into the record (Exs. 1-5). The Individual presented his own testimony, as well as the testimony of his direct supervisor (Supervisor) and a co-worker (Co-Worker). *See* Transcript of Hearing, Case No. PSH-12-0124 (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 of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, 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 based on a 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 national security.” *Id.*; *see generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (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. Factual Findings

The underlying facts are not disputed. During the April 2012 polygraph examination, the Individual revealed that, in 2011, he had written a coded version of a combination to a secured area safe² on a post-it note (2011 Password Incident) and had taken it home with him. Ex. 5 at 9; Tr. at 38. Later, after trying to remember if he had been involved in other security incidents, the Individual informed officials that, in 2002 and 2005, he had written a coded combination to a

² Referred to herein as a classified repository or classified safe.

classified safe in his day planner and had taken the planner home with him (2002 and 2005 Password Incidents). Ex. 5 at 7, 17; Ex. 4 at 1.

During the 2012 PSI, the Individual recounted the 2002, 2005, and 2011 Password Incidents. Ex. 5 at 5, 7, 17. Further, the Individual admitted that, with regard to each of these incidents, he was aware of the facility's security rules regarding the storage of combinations and his duty to report these incidents to the LSO. Ex. 5 at 17-21, 22-24, 27-28. The Individual admitted that he did not report any of these incidents to responsible security officials because he was afraid of the consequence to his career that would result from the incidents.

The Individual also revealed in the 2012 PSI that he had been involved in an incident where a secured door had not been properly latched (2012 Door Incident). Ex. 5 at 45-46. The Individual was conducting an assessment of a secured facility. Another employee signed out the key for various doors at the facility and escorted the Individual. The next day, one of the secured doors was found not to be properly latched. Ex. 5 at 47. The door was later found to have a mechanical fault that prevented it from properly latching despite the employee's and the Individual's belief that they had, in fact, latched the door. Tr. at 15. The Individual was not assigned any responsibility for this incident. Ex. 5 at 49.

B. Security Concerns

Criterion G pertains to information indicating that an individual has “[f]ailed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information; or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems.” 10 C.F.R. § 710.8(g). The Notification Letter cited the 2002, 2005, and 2011 Password Incidents and the 2012 Door Incident as Criterion G derogatory information. Also cited as Criterion G derogatory information were the Individual's failures to notify the LSO of the Password Incidents.

Deliberate or negligent failure to comply with rules and regulations for protecting sensitive systems, networks, and information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern. *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) (the Adjudicative Guidelines), Guideline M, ¶ 39; *see also, e.g., Personnel Security Hearing*, Case No. PSH-12-0081 (2012).³ In light of the Individual's admissions that he violated procedures for securing classified information, the LSO had sufficient grounds to invoke Criterion G in this matter.

³ Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, 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.energy.gov/oha/office-hearings-and-appeals>.

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(1). The Notification Letter cited the 2002, 2005, and 2011 Password Incidents and his admission that he failed to report these incidents as Criterion L derogatory information.

Noncompliance with rules, procedures, guidelines or regulations pertaining to classified information or information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to protect classified information or sensitive systems and networks. *See e.g., Personnel Security Decision*, Case No. TSO-0658 (2008). *See Adjudicative Guidelines*, Guideline E, ¶ 15; *see also, e.g., Personnel Security Hearing*, Case No. PSH-12-0081 (2012). In light of the Individual's admissions regarding his failure to comply with classified information rules and procedures, I find that the LSO properly invoked Criteria L.

C. Mitigation of Security Concerns

At the hearing, the Individual did not dispute any of the derogatory information listed in the Notification Letter. Tr. at 47. He presented his own testimony along with his Supervisor's and the Co-Worker's testimony to mitigate the concerns raised by the derogatory information in the Notification Letter

1. The Supervisor's and Co-Worker's Testimony

The Individual's Supervisor has supervised the Individual for almost 21 years. Tr. at 10. He testified that with regard to the 2012 Door Incident, the facility determined that the issue was not a failure to close the door but a mechanical problem with the door itself. Tr. at 13. As a result no security infraction was issued in reference to that incident. Tr. at 13. The Supervisor believes that given the mechanical failure, the Individual's alleged security failure should not be considered significant. Tr. at 15.

In reference to the other incidents listed in the Notification Letter, the Supervisor believes that each incident reflects a serious security infraction. Tr. at 13-14. The Individual had received training that should have directed him not to write down and take home even a coded combination. Tr. at 16. The Supervisor testified that their organization has had a repository for almost the entire time he has been working. Tr. at 17. The Supervisor usually found the Individual to be conscious of and serious about security rules and regulations. Tr. at 17, 21. Consequently, he was surprised to learn that the Individual wrote a coded password in his day planner. Tr. at 17.

The Supervisor also thought it was a serious matter that the Individual did not self-report any of the incidents to the LSO. Tr. at 20. In this regard, the Supervisor testified that his employees are instructed to self-report security incidents. Tr. at 20. The Supervisor believes that over the past several years employees have become less fearful of self-reporting security infractions. Tr. at 25.

The emphasis of their training is to avoid security incidents, but if you do make a mistake, do not compound the error by not reporting the incident or lying about it. Tr. at 25.

The Supervisor has discussed these Password Incidents, in general, with the Individual and he believes that the Individual now has a sincere appreciation for his mistakes with the combinations and would not expect the Individual to make a similar mistake in the future. Tr. at 22. The Supervisor has a high level of confidence regarding the Individual's willingness to self-report in the future. Tr. at 23. The Supervisor has not had any reason to question the Individual's judgment, reliability, or trustworthiness, outside of the incidents described in the Notification Letter and considers the Individual "above average" in his job performance. Tr. at 23-24. Overall, the Supervisor believes that the incidents described in the Notification Letter are not serious enough to merit revocation of the Individual's clearance. Tr. at 16.

The Co-Worker testified that he has known the Individual for approximately 11 years. Tr. at 29. Observing the Individual at work leads him to believe that the Individual pays great attention to security issues. Further, he never observed the Individual leave classified materials unattended on his desk. Tr. at 32. The Co-Worker believed that the Individual was trustworthy and reliable. Tr. at 33.

2. *The Individual's Testimony*

The Individual testified that he has worked at the facility since 1991. Tr. at 35. During his polygraph examination, he answered "yes" to a question regarding whether he had ever mishandled classified information and discussed the 2011 Password Incident with the examiner. Tr. at 37. After the polygraph, he was able to recall the 2002 and 2005 Password Incidents and reported those incidents to the LSO. Tr. at 39.

With regard to the 2002 and 2005 Password Incidents, where he had coded the passwords into his day planner, the Individual testified that he had always had problems memorizing the characters that made up the combination to the secured safe. Tr. at 40. This was especially so since he did not have to access the safe very often. Tr. at 40. The Individual's problem in memorizing the combination was complicated by the fact that, if one wrote down the combination, the document would itself become a classified document. Tr. at 41. The Individual believes that he is not the only person who has written down a combination in violation of the security rules. Tr. at 43.

As to why he did not self-report his security incidents, the Individual testified that he believed that he would get into serious trouble at work, especially with regard to the older incidents, specifically the 2002 and 2005 Password incidents. Tr. at 43. With regard to classified safe combinations, the Individual now would not write the combination down. If the Individual did write the combination down and did not follow the security rules associated with such a document, he would immediately report the violation to the LSO. Tr. at 44, 46. This is especially so given the difficulties he has experienced as a result of going through the administrative review and security hearing process. Tr. at 50.

D. Analysis

Since the derogatory information that comprise the Criterion G and L concerns are essentially the same, I will consider them together for the purpose of determining whether sufficient mitigation exists to justify the restoration of the Individual's security clearance.

As an initial matter, I find that the Individual has resolved the security concern raised by the 2011 Door Incident. The Supervisor's testimony indicates that the incident was most likely caused by a mechanical failure of the door. Further, the Supervisor testified that the LSO has not issued anyone a formal security infraction regarding this incident. I must conclude, based upon the evidence before me, that the Individual did not violate any security rule or regulation with regard to this incident.

With regard to the 2002, 2005, and 2011 Password Incidents, I do not believe that the Individual has provided sufficient evidence to resolve the security concerns raised by these incidents. While two of the incidents occurred some time ago, a similar security incident concerning a combination has occurred recently. Given this, it is apparent that the Individual has a pattern of laxity regarding security rules for secured safe combinations. The evidence in the record also indicates that the incidents have not been caused by a lack of training or other unique circumstance. *See Personnel Security Hearing*, Case No. PSH-12-0083 (2012). Further, there is no significant evidence that the Individual has undergone any type of remedial security training. *See* Adjudicative Guidelines, Criterion K, ¶ 35(b). While I commend the Individual's new attitude regarding his intention to be diligent and self-report future incidents, there is not sufficient evidence of this changed mindset to find that the Criterion G and L security concerns have been resolved. In sum, there is insufficient evidence before me that establishes that the concerns raised by the derogatory information contained in the Notification Letter have been resolved. *See Personnel Security Hearing*, TSO-0949 (2010) (individual's clearance not restored based upon similar facts to present case).

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual's eligibility for a security clearance under Criterion G and L of the Part 710 regulations. Further, I find that the Individual has not presented sufficient evidence to resolve the concerns raised by the Criterion G and L derogatory information. Therefore, I cannot conclude that restoring the Individual's 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 not restore the Individual's 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.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: January 14, 2012