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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 11, 2013 ) Case No.: PSH-13-0085  
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Issued : September 30, 2013

**Hearing Officer Decision**

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization<sup>1/</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the Individual’s access authorization should be restored.

**I. Background**

The Individual is employed by the DOE in a position that requires him to hold a DOE security clearance. In 2009, 2011, and 2012, the Individual completed a Questionnaire for Security Positions (QNSP). The Individual’s responses to the question regarding his illegal drug use differed on these forms.

On June 5, 2013, the Local Security Office (LSO) sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial

<sup>1/</sup> Access authorization is defined as “an administrative determination that an Individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (f) (hereinafter referred to as Criterion F).<sup>2</sup>

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the Individual presented his own testimony and the testimony of four witnesses. The Individual also submitted one exhibit into the record. The LSO submitted six exhibits into the record.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the Individual because it is designed to protect national security interests. This is not an easy burden for the Individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward with evidence to convince the DOE that restoring his 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). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Hearing Officer's Decision**

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<sup>2/</sup> Criterion F concerns information where an individual has “deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel security interview, 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).

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites Criterion F as the basis for suspending the Individual's security clearance. To support its Criterion F allegations, the LSO relies on the Individual's omission from his 2009 QNSP regarding his illegal drug use. Conditions that can raise a security concern include the deliberate omission, concealment, or falsification of relevant facts from any questionnaire completed during the personnel security process. See Guideline E ¶ 16 (a) of the *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). In addition, the Individual made false statements regarding his illegal drug use to the Office of Personnel Management (OPM) investigator in 2009.<sup>3/</sup> Providing false statements to an investigator during the security process is a condition that can raise a security concern. Adjudicative Guideline E ¶ 16 (b).

### **IV. Findings of Fact**

The Individual completed a QNSP in May 2009 at age 19 when he was still in college. DOE Ex. 5; Tr. at 57, 67. He completed the form without any advice or counsel. Tr. at 67. On that QNSP, the Individual responded negatively to the question regarding his illegal drug use. DOE Ex. 5 at 37. At that time, the Individual believed that if he stated that he had used illegal drugs, he would not be granted a security clearance, leading to him not being hired by the Department of Defense (DOD). Tr. at 55. The Individual worked for DOD for approximately four months before returning to college. DOE Ex. 4

In 2011, approximately 19 months after leaving his DOD employment, the Individual was hired for an internship with the DOE and his DOE mentor counseled him that the most important aspect of completing a security form was to be truthful. Tr. at 56. His mentor, who is also his current manager, confirmed their 2011 discussion. Tr. at 12. His office mate also confirmed that she had a similar discussion with the Individual. Tr. at 22. When he completed his QNSP in 2011, the Individual indicated that he had used illegal drugs during 2008, a time covered by the 2009 QNSP. Ind. Ex. A at 32.

In December 2012, the Individual was required to complete another QNSP. He also revealed on that security form that he had used illegal drugs in 2008.

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<sup>3/</sup> Although these are raised as two separate security concerns, for convenience in this Decision, I will refer to them as one concern, i.e., the omission from the Individual's QNSP.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>4/</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should be restored. I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

In considering the evidence before me, I first looked to the Adjudicative Guidelines. to determine whether the individual has mitigated the Criterion F concerns. I considered the relevant factors set forth in Adjudicative Guideline E. Some of the conditions that could mitigate security concerns raised under Criterion F include the following: (1) the Individual made a good-faith effort to correct his omission prior to his being confronted with his falsification; (2) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (3) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and (4) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. *See Adjudicative Guidelines* at ¶17 (a), (c), (d), and (e). I find that all of these relevant factors apply in this case.

First, the Individual came forward in the 2011 QNSP without being confronted by the DOE or DOD regarding his falsification. Adjudicative Guidelines ¶ 17(a). The Individual's falsification appears to be an anomaly in his behavior. His witnesses all testified that he is an honest and truthful person. Adjudicative Guidelines ¶ 17(c). The Individual has acknowledged that he omitted the information on the 2009 QNSP. I find that the Individual's behavior is not likely to recur. Adjudicative Guidelines ¶ 17(d). By coming forward with his omission in 2011, the Individual took positive steps to eliminate his vulnerability to exploitation or blackmail. Adjudicative Guidelines ¶ 17(e).

In considering this case under the factors listed in 710.7(c), I find first that the Individual was young and immature in 2009 when he lied on his first QNSP. Second, I find that he

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<sup>4/</sup> Those factors include the following: 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 at the time of the conduct, the voluntariness of his 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.

maintained that falsehood for only four months during the period of his college internship. Third, the Individual corrected his falsehood as soon as he obtained a new position with the federal government. Fourth, the testimonial evidence persuades me that the Individual is an otherwise honest person. For example, his graduate school colleague indicated that the Individual would not even download music illegally. Tr. at 37. Further, the Individual manager testified, “I completely trust his honesty.” Tr. at 19. In the end, I find that the Individual’s 2009 falsehoods were aberrational behavior.

In determining whether there is mitigation, our previous cases involving falsifications looked at the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual’s admission. *See Case No. VSO-0327* (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). *See also Personnel Security Hearing, Case No. VSO-0289*, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use); *Personnel Security Hearing, Case No. VSO-0319*, 27 DOE ¶ 82,851 (2000), *affirmed* (OSA, 2000).

In addition, OHA Hearing Officers have held that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior such as lying. *See e.g., Personnel Security Hearing, Case No. TSO-0394*, 29 DOE ¶ 82, 984 (2006) (six months of honest behavior not sufficient to mitigate dishonesty that spanned for nine months when Individual’s admission of previous dishonesty occurred in response to a DOE Psychiatrist’s suggestion that he might have her tested for drug use); *Personnel Security Hearing, Case No. TSO-0316*; (finding that the Individual had failed to establish a pattern of honest behavior); *Personnel Security Hearing, Case No. TSO-0302*, 29 DOE ¶ 82, 968 (2006) (10 months of honest behavior not sufficient to mitigate falsehood that spanned 16 years); *Personnel Security Hearing, Case No. VSO-0555*, (seven months of honest behavior not sufficient to mitigate dishonesty that spanned for six years when disclosure of falsifications was not voluntary); *Personnel Security Hearing, Case No. VSO-0448*, 28 DOE ¶ 82,816 (2001) *affirmed* (OSA, 2001) (11-month period not sufficient to mitigate four-year period of deception); *Personnel Security Hearing, Case No. VSO-0440*, 28 DOE ¶ 82,816 (2001) *affirmed* (OSA, 2001) (18 months of responsible, honest behavior sufficient evidence of reformation from dishonesty that spanned six months in duration). In this case, the Individual maintained the falsehood for a period of approximately four months, the time he was working at DOD. He corrected his falsehood in April of 2011 when he became a DOE employee, over two years prior to the hearing.

After considering the “whole person concept” and all the evidence discussed above, I find that the Individual has mitigated the Criterion F concern raised by his omission from his 2009 QNSP.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion F. After

considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to mitigate these security concerns associated with Criterion F. I, therefore, find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Hearing Officer  
Office of Hearings and Appeals

Date: September 30, 2013