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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	August 29, 2013	)	
		)	Case No.: PSH-13-0102
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Issued: December 20, 2013

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**Hearing Officer Decision**

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William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual works for a DOE contractor in a position that requires her to maintain a DOE security clearance. The individual’s arrest in the spring of 2013 raised security concerns in the opinion of the local security office (LSO), and the LSO suspended the individual’s security clearance. On August 1, 2013, the LSO sent a letter (Notification Letter) to the individual advising her that it had reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within

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<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.

the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 708 regulations to request an administrative review hearing, and I was appointed the Hearing Officer in this case. At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, her parents, her supervisor, two co-workers, and two neighbors. The LSO submitted 13 numbered exhibits (Exs. 1 through 13) into the record prior to the hearing, and the individual submitted 11 exhibits (Exs. A through K) prior to the hearing, and one exhibit (Ex. L) immediately following the hearing. The transcript of the hearing will be hereinafter cited as “Tr.”

## **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).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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 her 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). An individual is thereby afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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<sup>2</sup> Criterion L relates, in pertinent part, to information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is 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 interest of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior . . .” 10 C.F.R. § 710.8(l) (Criterion L).

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

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**

In the Notification Letter, the LSO cites one criterion, Criterion L, as the basis for suspending the individual's security clearance. Ex. 1. The LSO's security concerns fall into two categories, criminal conduct and associating with another person involved in criminal conduct. As evidence of criminal conduct, the LSO cites the individual's 2011 and 2013 arrests, when the individual was charged with Domestic Violence, Non-Aggravated Assault. With respect to the individual's association with an individual who was involved in criminal conduct, the LSO relies on information that from 2005 or 2006 until February 2013 she allowed her now ex-husband to remain in her house, and provided him with financial support, after she became aware that he was selling his prescription medication to others and was using illegal drugs, though she was aware of the DOE's security concerns for such behavior. *Id.*

I find that the information as set forth above constitutes derogatory information that raises substantial doubt regarding an individual's eligibility for access authorization under Criterion L. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and by its very nature calls into question a person's ability or willingness to comply with laws, rules, and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at Guideline J, ¶ 30. Furthermore, association with persons involved in criminal activity raises similar concerns about an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines at Guideline E, ¶ 16(g). Sharing living accommodations with someone who uses illegal drugs, or remaining at a residence where illegal drug use occurs, raises such a concern. *See generally Personnel Security Hearing*, Case No. TSO-0845 (March 9, 2010); *Personnel Security Hearing*, Case No. TSO-0692 at 7 (April 15, 2009) (cohabitation with illegal drug user raises a security concern, because DOE considers "close association with an illegal drug user to constitute 'illegal drug involvement'").<sup>3</sup>

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<sup>3</sup> Decisions issued by the Office of Hearings and Appeals after November 19, 1996, are available on the OHA website located at <http://www.energy.gov/oha>.

#### IV. Findings of Fact

The individual has held a security clearance throughout her ten-year marriage, which ended in divorce in September 2011. Tr. at 38, 114-15. Her husband was a controlling, manipulating individual, who was often angry and strove to isolate her from her family and acquaintances. *Id.* at 74, 95 (testimony of parents). He was only marginally employed. *Id.* at 116; Ex. 10 (Transcript of Personnel Security Interview (PSI), February 23, 2011) at 11. The individual paid all the household expenses from her wages, including daycare for their two small children. Ex. 10 at 12; Ex. 11 (Transcript of PSI, June 20, 2013) at 81. Without her knowledge, her husband had allowed liens to be taken against their house, presumably for loans he obtained in his name, on which he failed to meet his obligations. Ex. 11 at 12. Neighbors testified that they had overheard her husband yell at her on several occasions and, after one fight, housed her and her one-year-old overnight. *Id.* at 50, 68. The individual testified that her ex-husband had punched her, usually on the back of the head, where bruises would not show. *Id.* at 137. A manager at her facility testified that he had seen bruises on her arms at work, and that she had called him in February 2013 terrified, stating that her husband was behaving wildly due to drug use and that she was afraid to report the incident to the police. *Id.* at 16. Every witness questioned about the individual's character responded that she was not violent by nature. *Id.* at 13, 47, 63, 86, 96. Several of the witnesses further testified very favorable as to the individual's honesty, reliability, and trustworthiness. *Id.* at 13, 14, 37, 110.

Late in 2010, the individual's husband moved out of their house. He lived for a while in homeless shelters and, from January to March 2011, in his car. *Id.* at 122-23. The individual felt guilty and allowed him to move back into the house while she worked her way through their divorce. *Id.* at 123. In February 2011, the individual and her husband engaged in a physical fight. The individual testified that her husband cornered her in the basement, provoked her, and a shouting match ensued between them. He then punched her in the jaw and hit her in the back of the head. She defended herself and, in so doing, scratched him, drawing blood. *Id.* at 136-37; Ex. 10 at 8, 10, 14. She left the house, and by the time she reached the police station, her face bore no visible marks of her husband's aggression. In the meanwhile, her husband had apparently alerted the police regarding her attack on him; in any event, the police arrested her when she arrived at the police station and charged her with Domestic Violence. Tr. at 137. Her parents drove from their home several hours away to bail out their daughter. *Id.* at 97. According to the individual, the charge was dropped when her husband failed to appear in court. *Id.* at 137. By September 2011, the couple was divorced and the now ex-husband continued to live in the house, as he had lost his job. *Id.* at 123. She still loved him and wanted to help him, and he promised her that he would do better. Ex. 11 at 80, 93. She also stated that she let him move in because she needed him to sign a quitclaim deed releasing the house to her. *Id.* at 44. He stayed there for two years. Tr. at 123.

The couple fought again in April 2013. The ex-husband had taken the individual's cell phone and checkbook and would not return them to her. The neighbors testified that they witnessed the ex-husband screaming at the individual while holding the couple's three-year-old son. *Id.* at 48, 65. The police again arrested the individual for Domestic Violence, on the ex-husband's allegation that she had hit, punched, and scratched him.

Ex. 11 at 133. The individual testified that while she undoubtedly touched him trying to regain her phone and checkbook, she did not hit, punch or scratch him. Tr. at 133 (any scratches may have been self-inflicted or received from the young son). The manager who testified at the hearing bailed her out of jail, and she spent the night with a co-worker, who also testified at the hearing. *Id.* at 15, 87. The charges were again dismissed when the ex-husband failed to appear in court. *Id.* at 135-36.

After the April 2013 fight, the ex-husband moved out of the house. He returns weekly to exercise his visitation rights, but otherwise there is no contact between the individual and him. *Id.* at 139. With help from her parents and the manager, the individual removed most of the ex-husband's possessions from the house in May 2013. *Id.* at 101; Ex. 11 at 31. The manager testified that in July 2013 he observed her husband yelling at her during one such interaction. Tr. at 26. The ex-husband was returning the children to her house and wanted to enter. She would not allow him in, and he went around the house trying to find a way in. She called the police, who removed him from the property. *Id.* at 126. Ultimately, she obtained a warrant for his arrest for disturbing the peace. Ex. K.

In addition to her criminal activity, as described above, the individual's association with a person engaging in criminal activity—in this case, her husband—raises concerns about the individual's eligibility to hold an access authorization. According to her statements during her 2013 PSI, the individual realized that he was selling his prescription pain medication to others in 2005 or 2006. Ex. 11 at 53-55. She testified that she learned that he was abusing drugs when he admitted to her in 2007 that he had been taking hydrocodone for a year before it was prescribed for him in a hospital. *Id.* at 157-58. She also suspected that he was using marijuana when she observed clouds of smoke inside the house in 2010. She testified that she did not know what he was doing, but she certainly sensed that it was wrong. *Id.* at 115-16. When cleaning the garage in 2011, the individual and her father discovered some glass pipes that she believed were related to drug use or manufacture, and in 2013, she found black residue on an abandoned high chair. *Id.* at 117. Nevertheless, she allowed him to stay in the house, because at times he would hold down a job and help with the children. *Id.* at 116.

The individual admits that she provided financial assistance to her ex-husband after she was aware that he was using illegal drugs. At one point, in November 2012, the individual gave her ex-husband \$100 for gas, so that he could deliver their son to daycare at a time when she was working. In February 2013, she paid for his bankruptcy proceeding in order to eliminate the liens on what was now her house. She has provided no support to him since that time. Tr. at 138.

The individual's forgiving attitude toward her husband has since changed. She maintains that it stopped in April 2013, when her children witnessed her being arrested at the request of her ex-husband. She learned from her young daughter the next day how shaken up the child was when the police took her mother away, and she determined that it would not happen again. Ex. 11 at 96. The ex-husband has not lived in the house since that time. Tr. at (26, 53, 66-67, 83, 101-02. The individual no longer provides any support to her ex-husband, including gas money; he must pay for any transportation related to exercising the visitation rights the divorce granted him. *Id.* at 138; Ex. C. On April 22, 2013, she had all the locks on her house's exterior doors changed, and by

May 2013 had removed virtually all of his belongings from the house. *Id.* By June 2013, she stated that she was “emotionally separated from” her ex-husband. Ex. 11 at 120. After the July 2013 incident, the individual had her divorce lawyer speak with her ex-husband to establish guidelines implementing the custody terms of their divorce, including limiting communications about visitation arrangements to e-mail only and prohibiting his leaving his vehicle when picking up for visitation or returning them. Tr. at 130; Ex. G. As stated above, there is an outstanding warrant for his arrest for disturbing the peace and intimidation during the July incident. Ex. K. As of September 2013, the very last of the ex-husband’s possessions found in the house were made available to him. Tr. at 130.

At the hearing, the individual acknowledged that she had displayed poor judgment by letting her ex-husband move back into the house, especially after she was aware that he was using illegal drugs. *Id.* at 123. She testified that she will no longer let him return to her house. She stated that she now feels sorry for him, and while she feels that the children should still have their father in their lives, she will not have him in hers. *Id.* at 152.

## V. Analysis

At the outset of this analysis, I must acknowledge that the witnesses upon whose testimony I have made my factual findings all appeared on behalf of the individual, and their testimony was undeniably favorable to her and frequently painted her ex-husband in a poor light. While cognizant of the potential bias inherent in this testimony, I find that all the witnesses were credible and reliable reporters of fact. The individual in particular was extremely credible, on several occasions expanding on the testimony of others to present more complete facts, even when those facts were to her detriment. *See, e.g., id.* at 38.

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> After due deliberation, I have determined that the individual’s security clearance should be restored. The specific findings that I make in support of this decision are discussed below.

The record before me establishes that the individual is not a violent person, prone to criminal conduct. On the other hand, the witnesses consistently portrayed the individual’s ex-husband as violent and manipulative. I find it completely credible that he abused her physically in 2011 and instigated the fight in 2013, yet in both cases managed

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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, including knowledgeable participation, the frequency and recency of the conduct, the individual’s age and maturity at the time of the conduct, the voluntariness of the individual’s 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 continuance or recurrence, and other relevant and material factors.

to convince the police to have her arrested. I note that both Domestic Violence charges were dismissed because the husband failed to appear in court. Although a dismissal on technical grounds does not mitigate the LSO's security concerns regarding criminal charges, in this case, the alleged victim's failure to cooperate with the prosecution casts a shadow on the charges themselves. In any event, the individual has substantially changed her family life, expelling the ex-husband and all his possessions from the house, changing the locks, eliminating all physical contact with him, enforcing the no-contact provisions with a pending warrant for his arrest. More important, her feelings toward her ex-husband have changed dramatically since April 2013: she is now emotionally separated from him and does not want him in her life. Under these circumstances, I find it highly unlikely that the individual will engage in conduct similar to that which led to her arrests for Domestic Violence, and further find that the behavior that resulted in her arrests does not cast doubt on her reliability, trustworthiness, or good judgment. I therefore find that the individual has mitigated the LSO's security concerns with respect to her Domestic Violence arrests. *See* Adjudicative Guidelines at Guideline J, ¶ 32(a).

At some point during the marriage, the individual became aware that her husband was selling his prescription medications to others and using illegal drugs. At the hearing, the LSO pointed out discrepancies between her statements during PSIs and those she made at the hearing concerning when she first learned that her husband was abusing prescription medications and using illegal drugs. At the hearing, however, she convincingly explained that early on she suspected that her husband might have been engaging in illegal activity, but was not sure until later, when either he admitted his behavior to her, where hydrocodone was involved, or she encountered a room full of smoke and evidence of illegal drugs in the garage. After considering her testimony, I conclude that her discrepant responses on this matter were not intended to mislead the LSO but rather arose from the varying contexts and manners in which she was questioned. In any event, her admissions that she learned of her husband's hydrocodone abuse in 2007 and his use of illegal drugs in 2010 are sufficient to raise security concerns on the basis of allowing him to live in her house despite her knowledge of his drug involvement. I note that family members, such as spouses, involved in criminal activity can be far more difficult to disassociate from than mere friends or neighbors. *Cf. Personnel Security Hearing, Case No. TSO-0845 (2010) (college roommates and housemates)*. Nevertheless, for the reasons stated above, including the ex-husband's expulsion from the family home and the individual's change of heart toward him, and her acknowledgment at the hearing of the poor judgment she displayed in the past by allowing him to remain in the family home, I find it quite unlikely that she will engage in similar association in the future.<sup>5</sup> Because her association with a person involved in criminal activity has ceased, and because it occurred under circumstances unlikely to recur, I find that the individual has mitigated

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<sup>5</sup> The individual also testified that, despite the LSO's assertions, she was not aware that the LSO considered her association with her husband to be a security concern. Tr. at 122. Although she spoke to her mother, her father, and the manager about her Domestic Violence arrests, she never expressed concern to them about her ex-husband's drug use or her association with him as a drug user. *Id.* at 35 (never talked to manager about association concern), 77, 96 (never expressed concern about ex-husband's drug use at all). Based on the record before me, I cannot find that, at the time she was permitting her ex-husband to live in their home with knowledge that he was engaging in criminal activity, the individual was aware that her association with her husband raised a security concern.

the LSO's security concerns regarding her association with such an individual. *See* Adjudicative Guidelines at Guideline E, ¶ 16(g).

## **VI. Conclusion**

As explained in this Decision, I find that the LSO properly invoked 10 C.F.R. § 710.8(l) in suspending the individual's access authorization on the basis of derogatory information it received regarding the individual. 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 the security concerns associated with these criteria. I therefore find that restoring an access authorization to the individual would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: December 20, 2013