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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: August 27, 2014 )  
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**Case No.: PSH-14-0082**

**Issued: November 25, 2014**

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I conclude that the Individual’s request for a security clearance should not be granted.<sup>2</sup>

**I. BACKGROUND**

During an initial background investigation of the Individual, a Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on February 12, 2014, and sponsored two forensic psychological examinations of the Individual which occurred on March 14, 2014, and June 6, 2014. Because the PSI and forensic psychological examinations did

<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>.

not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on August 27, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his best friend, his brother, his spouse, his pastor, a former coworker, two coworkers, a supervisor, a DOE Personnel Security Specialist (the PSS) and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-14-0082 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, and the Individual submitted 41 exhibits, which are marked, as Exhibits A through Z, and then A1 through A15.

## II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraphs (f),<sup>3</sup> and (l)<sup>4</sup> of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. The LSO also cited Guideline E 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 support of its contention that information in the possession of the DOE has created a substantial doubt concerning his eligibility for a security clearance.

To justify its reliance on Criterion F, the LSO alleges that the Individual deliberately provided false or misleading information on a Questionnaire for National Security Positions (QNSP).<sup>5</sup> These circumstances, as alleged, would adequately justify the LSO's invocation of Criterion F,

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<sup>3</sup> Criterion F refers to information indicating that the Individual "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, 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, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8(f).

<sup>4</sup> Criterion L refers to information indicating that the Individual has "engaged 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 interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8(l).

<sup>5</sup> The LSO further alleges that the Individual deliberately provided false or misleading information on a Pre-Employment/Pre-Clearance Suitability Investigation form (the Pre-Employment Form). However, because the Pre-Employment Form is not a form submitted to the DOE to obtain a security clearance, I find that this allegation does not come within the purview of Criterion F. I will, however, consider this allegation under Criterion L.

and would raise significant security concerns. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” Adjudicative Guideline E at ¶ 15. Under the Adjudicative Guidelines, a deliberate omission or concealment of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations or determine security clearance eligibility or trustworthiness could raise a security concern and may be disqualifying. Adjudicative Guideline E at ¶ 16(a).

The LSO further alleges that the Individual has exhibited: (1) a pattern of dishonesty evidenced by his failure to provide truthful statements on a QNSP, the Pre-Employment Form, during a PSI, and during a forensic psychological examination; (2) “an inability to work with women”; (3) an inability to follow rules or regulations; and (4) a history which demonstrates the presence of impaired judgment and reliability. These circumstances, as alleged, would adequately justify the LSO’s invocation of Criterion L, and raise significant security concerns. The Adjudicative Guidelines provide that the deliberate provision of false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative can raise a security concern and may be disqualifying. Guideline E at ¶ 16(b). Similarly, questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information, may also raise a security concern and be disqualifying. Guideline E at ¶ 16(d).

### **III. REGULATORY STANDARDS**

The Administrative Judge’s role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of 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). In rendering this opinion, I have considered the following factors: 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 continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### **IV. FINDINGS OF FACT**

#### **A. The Police Department**

From October 2004 to August 2009, the Individual was employed by a large metropolitan police department (the Police Department). Exhibit 7 at 1. According to the report generated as a result of an Office of Personnel Management (OPM) investigation into the Individual's background, the Individual was terminated from this position and was ineligible for rehire. Exhibit 7 at 1. The OPM Report further indicates that the Individual was reprimanded on two occasions for leaving his post at a crime scene to speak to another officer, and that he had three administrative investigations pending against him when he was terminated. Exhibit 7 at 6. The OPM report also states that the Individual's supervisor stated that the Individual:

Had a "chip on his shoulder" and was not a good communicator within the community that he served. [The Individual] did not make good decisions and had poor judgment in [her] opinion. [The Individual] received several . . . complaints from citizens that he made contact with through his patrol duties . . . . The [Individual] did not appear to be emotionally stable when he worked [for the Supervisor].

Exhibit 7 at 1-2.

In his QNSP, the Individual checked "no" to a QNSP question concerning the Police Department asking if he had been fired, quit after being told he would be fired, or left by mutual agreement following charges of misconduct or unsatisfactory performance. Exhibit 5 at 18. Instead, the Individual indicated that he left the Police Department to move back to his home state.<sup>6</sup> Exhibit 5 at 18. However, the Individual reported that he had been reprimanded on a number of occasions for: (1) checking the wrong house after a report of a burglary in progress, (2) missing a legal hearing, (3) being involved in a motor vehicle accident (reprimanded on three separate occasions), (4) failing to timely report another officer's excessive use of force, (5) failing to properly attend to a suicidal mental patient, (6) temporarily leaving his post, and (7) threatening to fight a suspect. Exhibit 5 at 20-21.

During his February 12, 2014, PSI, the Individual again reported his reprimands during his employment with the Police Department. He admitted "I was young and dumb and full of pride and I just wanted [to] kick ass and take names. I'm 35 years old now and I still don't mind doing that, but I'm not out there looking for you know stuff like excitement. I'm more of a family guy--." Exhibit 4 at 25. He further described himself as "young and stupid" and as having a "chip on his shoulder" during his employment with the Police Department, and that he may have been emotionally unstable during that period. Exhibit 4 at 26-27. He claimed that he has been humbled and become a different person. Exhibit 4 at 26.

## **B. The Nursing Home**

The OPM Report indicates that the Individual was employed at a nursing home from February 2012 until March 2013, when he was "terminated for insubordination, sexual harassment and promoting a threatening and uncomfortable workplace." Exhibit 6 at 2. The Individual reported to the OPM investigator that, at the time of his termination, the Nursing Home had not taken any

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<sup>6</sup> The LSO does not allege, in the Notification Letter, that this was an intentional misrepresentation or omission by the Individual.

disciplinary actions against him, except for two occasions when he had been suspended while charges against him were investigated and found to be unfounded. Exhibit 6 at 2.

On his QNSP, the Individual reported that he left his employment at the Nursing Home because he had been “fired” on March 4, 2013, and explained that he was terminated because he had written a letter on February 19, 2013, to the “Director of Nursing regarding unsafe conditions for residents due to chronic low-staffing.” Exhibit 5 at 14-15. He further stated: “During the year that I worked [at the Nursing Home] I received no verbal or written reprimands.” Exhibit 5 at 15. The Individual further reported that his application for unemployment benefits was challenged by the Nursing Home. *Id.* This challenge resulted in a hearing before a state Administrative Law Judge (ALJ). The Individual claimed that the only basis for his termination claimed by the Nursing Home in the unemployment proceeding was “insubordination.” *Id.* The ALJ’s decision, however, indicates that: “[The Nursing Home’s] secondary reasons for terminating [the Individual] were oral complaints made by coworkers and/or patients near the end of February 2013 which were investigated by the Executive Director.”<sup>7</sup> Exhibit O at 2. The Individual reported that: “The Judge ruled that [the Nursing Home’s] accusation of insubordination was unfounded.” Exhibit 5 at 15. The Individual omitted the ALJ’s findings concerning the alleged oral complaints made by coworkers and/or patients. The ALJ’s decision found that the Nursing Home failed to meet its burden of proof since it had: “failed to provide firsthand testimony of the alleged insubordination and/or other allegations made against the [Individual].” Exhibit O at 4.

During his February 12, 2014, PSI, the interviewer asked the Individual if the Nursing Home had terminated him for “insubordination, sexual harassment, and promoting and threatening an uncomfortable workplace? [sic]” The Individual responded by stating “yes.” Exhibit 4 at 23. He, however, denied sexually harassing anyone. Exhibit 4 at 24. The Individual instead asserted that he was fired for sending the February 19, 2013, letter regarding unsafe conditions for residents due to chronic low-staffing. Exhibit 4 at 23-24.

The LSO obtained the Individual’s personnel records from the Nursing Home. Those records include the March 4, 2013, Termination Form. The Termination Form indicates that the Individual had been verbally counseled in April 2012, “regarding unprofessional communication, including communication of a sexual nature with female staff.”<sup>8</sup> Exhibit 9 at 1. Handwritten

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<sup>7</sup> “None of the co-workers who [made] oral complaints to [the Nursing Home] appeared at [the unemployment compensation] hearing.” Exhibit O at 2.

<sup>8</sup> The Termination statement further alleges in pertinent part:

Reported by multiple staff over the last week that - 1. Performance issues: Playing on I-Pad during work hours, not answering call lights and not assisting & helping staff when asked. 2. Unprofessional communication with multiple female staff: Inappropriate text messages to female staff, unprofessional verbal communication, including communication of a sexual nature, and creating a work environment that staff feel uncomfortable and not safe.

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Due to the severity & number of issues, including responses from multiple staff, your employment is terminated due to: 1. failure to follow Life Care Associate Conduct and Work Rules as well as

notes from the Individual's Nursing Home personnel file dated April 24, 2012, and April 1, 2012, corroborated the charges set forth in the Termination Form and that the Individual had been verbally counseled about these matters. Exhibit 9 at 11-12. The Termination Form did not accuse the Individual of insubordination. Exhibit 9 at 1. However, the Termination Form accuses the Individual of:

Unprofessional communication with multiple female staff; inappropriate text messages to female staff, unprofessional verbal communication including communication of a sexual nature, and creating a work environment that staff feel uncomfortable and not safe [and] Failure to comply with [the Nursing Home's] Conduct policy and Harassment/Discrimination policy. This included unprofessional communication with female staff. [C]reating an intimidating work environment *and* making negative comments towards other staff.

Exhibit 9 at 1. The Individual testified at the hearing that: "Sexual harassment doesn't appear on my termination form." Tr. at 194.

### **C. The Pre-Employment Form**

On July 13, 2013, the Individual submitted the Pre-Employment Form to his employer. The Individual reported that he had been fired from the Nursing Home "due to filing a complaint regarding care given to residents." Exhibit 8 at 2. He further reported that he had resigned from the Police Department "to move back home." Exhibit 8 at 3. The Pre-Employment Form asked seven questions requiring a "yes" or "no" response, including the following: Have you ever been disciplined or discharged by an employer for any form of harassment?; Have you ever been disciplined or discharged by an employer for insubordination?; and Have you ever been disciplined or discharged by an employer for violation(s) of any safety requirements/rules/regulations? Exhibit 8 at 7. The Individual checked the "no" box for each of these questions. Exhibit 8 at 7.

### **D. The First Forensic Psychological Examination**

At the request of the LSO, the Psychologist evaluated the Individual on March 14, 2014. Exhibit 3 at 1. After interviewing the Individual, evaluating his personnel security file, and reviewing his medical/psychological records, the Psychologist issued a Psychological Report on March 16, 2014. The Psychologist concluded his report by stating:

[The Individual] agrees that he demonstrated poor judgment as evidenced by his behavior while employed as a police officer. He demonstrated candor and

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standard nursing practices which includes unsatisfactory work, loitering during work hours, acting indifferent or rudely toward others and refusing to help with assignments. 2. Failure to comply with . . . Code of Conduct policy and Harassment Discrimination policy. This included unprofessional communication with female staff, creating an intimidating work environment and making negative comments towards other staff.

Exhibit 9 at 1.

substantially improved reasoning and judgment based on a solid value system which he has developed over the past 3 years. He represented that he resigned from the police department because of his commitment to recovering his relationship with his wife and his observation that he couldn't go more than a year without having some problem. He acknowledge[s] that he was completely unaware that the personnel records from the police department referenced him as being terminated in the context of 3 administrative investigations. I consider that he is not at risk of poor performance in managing his duties . . . with responsibilities for maintaining the security of information and materials.

This report provides an explanation of [the Individual] having "a chip on his shoulders" *as* related to him making an effort to prove himself through his own independent efforts has capable of making a change in the world. He acknowledges that this view led to him not participating well as a team member in the police department. If he had not made these substantial changes in his value system and behavior, he would've continued to accrue performance problems. I do not see him as manifesting a personality disorder or other mental disorder. I recommend that he is capable of functioning with much better judgment than he demonstrated in the past, and is capable of functioning with emotional stability.

Exhibit 3 at 3.

### **E. The Second Forensic Psychological Examination**

The LSO requested that the Psychologist review the Individual's personnel records from the Nursing Home, and consider re-evaluating him. After reviewing the Individual's personnel records from the Nursing Home, the Psychologist re-evaluated the Individual on June 6, 2014. Exhibit 2 at 1. On June 8, 2014, the Psychologist issued a second Psychological Report. Exhibit 2 at 1. In this report, the Psychologist opined that the Individual's personnel records from the Nursing Home "added substantial additional detail[s] raising a concern about [the Individual] not maintaining professional boundaries in the workplace." Exhibit 2 at 1. The Psychologist reported that he began his second interview of the Individual by confronting him with the Individual's personnel records from the Nursing Home, and asking the Individual why the Individual had not previously supplied the LSO with a copy of these notes. Exhibit 2 at 1. The Psychologist's Report indicates that the Psychologist considered the Individual's failure to submit personnel records from the Nursing Home to the LSO, when he was not asked to or required to do so, to be an intentional concealment of relevant information. Exhibit 2 at 1. The Psychologist elicited information from the Individual which indicated that he had engaged in frequent "sexual innuendo and flirtation" with his female co-workers at the Nursing Home; "went out into the automobile of a female coworker, during the nighttime meal break, across the street from the facility, and kissed her," and exchanged "sexually explicit texts" with another woman.<sup>9</sup> Exhibit 2 at 1-2. The Individual further admitted to the Psychologist that he had

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<sup>9</sup> The Psychologist reported that the Individual "described a situation in a nursing station in which a young nurse showed everyone her new tattoo on her upper thigh by pulling down her pants, revealing her panties. He recalls [that] he just sat there and did not object. At the same time he explained there was a situation in which he spoke directly to another woman who . . . he quoted [as] stating her intent of "I'm going to F\*\*\* you." Exhibit 2 at 2.

viewed pornography until 2013.<sup>10</sup> Exhibit 2 at 2. The Individual described himself as a "hypocrite" since he engaged in these behaviors even though he considers himself to be a devout Christian. Exhibit 2 at 2.

The Psychologist indicated that when he issued his first report, he had considered the Individual's "professed Christian faith in which he explained that he had been a committed Christian, for three years, to be potentially mitigating for his history of poor judgment [with the Police Department] and in sexual behaviors with women." Exhibit 2 at 2. However, the Psychologist now discounted the Individual's commitment to Christianity since the Individual: (1) told him that he had been a Christian for three years, "when in fact he had only been two years," (2) is allegedly addicted to pornography, and (3) covered-up the reasons for his termination from the Nursing Home. Exhibit 2 at 2.

The Psychologist concluded:

I do not consider [the Individual] to manifest diagnosable mental illness, but he does have a history of impulsive decisions in the context of having been very rigid, admittedly 'black and white' in his thinking, and having a need to prove himself. I believe that while he has a stated commitment to becoming humble in the way that Christians establish their faith, that he does not have a substantial history at this time that would allow me to believe he's demonstrated an ability to have good judgment. In addition, he has not sought out formal counseling, whether faith-based pastoral counseling, or behavior and emotional based counseling, to address his history of sexual impulsivity and his involvement with pornography. [The Individual] has a history of behavior and decisions which demonstrate the presence of impaired judgment and reliability.

Exhibit 2 at 3.<sup>11</sup>

## **V. ANALYSIS**

### **A. Criterion F**

The LSO contends that the Individual's OPM background investigation, as well as his personnel records from the Nursing Home, shows that he was terminated from the Nursing Home for "insubordination, sexual harassment and promoting a threatening and uncomfortable workplace." The LSO further alleges that the Individual deliberately provided false or misleading information when he stated on the QNSP that the Nursing Home terminated him for complaining about unsafe conditions instead of reporting the reasons supplied by the Nursing Home for his termination.

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<sup>10</sup> The Psychologist described the Individual's pornography use as "his addiction to looking at heterosexual pornography for many years until he came on the [DOE] site." Exhibit 2 at 2.

<sup>11</sup> The Notification Letter does not cite Criterion H, or Guideline I, in its allegations concerning the Individual.



On his QNSP, the Individual reported that he left his employment at the Nursing Home because he had been “fired” on March 4, 2013, and further explained that he was terminated because he had written a letter, on February 19, 2013, to the “Director of Nursing regarding unsafe conditions for residents due to chronic low-staffing. . . . During the year that I worked there I received no verbal or written reprimands.” Exhibit 5 at 14-15. The Individual further stated, in pertinent part:

Many of the accusations that the Executive Director used as grounds for firing me are untrue. I applied for unemployment and the Executive Director subsequently disputed me receiving unemployment with the state. We went to court and the Executive Director finally narrowed down one reason for terminating me which was insubordination on my part. . . . After the judge heard his testimony and my testimony the judge ruled that his accusation of insubordination was unfounded.

Exhibit 5 at 15. The Individual’s assertions concerning his termination by the Nursing Home omitted one key fact and included one misrepresentation. While the Individual disclosed that the Nursing Home had a different opinion as to the grounds on which it had terminated him, he indicated only that the Nursing Home had argued that it had terminated him for insubordination, when in fact the Nursing Home had also contended, at the unemployment benefits hearing, that its reasons for terminating [the Individual] included “oral complaints made by coworkers and/or patients. . . .” Exhibit O at 2. Moreover, the Individual’s assertion that he had not received any verbal or written reprimands during his employment with the Nursing Home, is flatly contradicted by handwritten notes dated April 24, 2012, and April 1, 2012, from the Individual’s Nursing Home personnel file, which indicate that the Nursing Home management had received complaints from co-workers about unprofessional communication, including communication of a sexual nature with female staff, and that the Individual had been verbally counseled about these matters. Exhibit 9 at 11-12. By doing so, he deliberately concealed that fact that he had been accused of sexual harassment and creating a threatening and uncomfortable workplace.

I find that the Individual has not resolved the security concerns arising from his deliberate omission of information from his September 5, 2013, QNSP that would have revealed that he had been disciplined and then terminated for sexual harassment or similar conduct. The relevant conditions under the Adjudicative Guidelines that may serve to mitigate security concerns raised by an individual’s deliberate falsification are: (1) that “the individual made prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted with the facts,” (2) “that the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unusual 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.” Adjudicative Guidelines, Guideline E, ¶¶ 17(a) (b) (d) and (e). The Individual only disclosed that he had been terminated for sexual harassment when he was questioned by the OPM investigator. This fact provides only partial mitigation since he only did so after it became clear that this information would be uncovered by the OPM

investigation. I cannot conclude that the Individual's multiple omissions were minor since they were clearly intended to conceal both the Individual's history of engaging in frequent sexual innuendo and flirtation with his female co-workers at the Nursing Home and the fact that he had been terminated after being accused of sexual harassment. Nor can I conclude that the Individual has fully acknowledged that he has been less than fully candid about his conduct while employed at the Nursing Home. While he has been meeting with a member of the clergy in order to help him address his perceived shortcomings, he did not include his lack of candor among the issues he sought to address. I therefore find that the Individual has not resolved the security concerns raised under Criterion F.

## **B. Criterion L**

The LSO alleges that the Individual has exhibited: (1) a pattern of dishonesty evidenced by his failure to provide truthful statements on a QNSP, on the Pre-Employment Form, during a PSI, and during a forensic psychological examination; (2) an inability to work with women, and to maintain appropriate professional boundaries, (3) an inability to follow rules or regulations; and (4) a history which demonstrates the presence of impaired judgment and reliability.

The LSO further alleges that the Individual responded negatively to three questions on the Pre-Employment Form. These questions are: Question 3, which asks "Have you ever been disciplined or discharged by an employer for any form of harassment?;" Question 4, which asks "Have you ever been disciplined or discharged by an employer for insubordination?;" and Question 6, which asks "Have you ever been disciplined or discharged by an employer for violation(s) of any safety requirements/rules/regulations?" Since the Individual had been verbally counseled for harassment in April 2012 and the stated reasons for his termination from the Nursing Home had included sexual harassment and insubordination, he should have answered "yes" to Questions 3 and 4.

As discussed above, the Individual clearly has exhibited a pattern of concealing his behavior at the Nursing Home and the fact that such behavior had been cited (perhaps unfairly) as a reason for the Nursing Home's termination of him.<sup>12</sup> While the Psychologist and the LSO contend that the Individual should have spontaneously shared copies of his personnel records from the Nursing Home that were in his possession, the Individual was not asked to do so, and therefore was not under any obligation to produce them. However, as I have discussed above, the Individual's concealment of some of the information contained in those records raises a security concern under Criterion L. This concealment continued in the PSI, where the Individual was asked: "Is there any other conducts or reprimands that happened with the [Nursing Home]?" The Individual answered "no." Exhibit 4 at 24. At the hearing, the Individual continued to deny that he had ever been disciplined at the Nursing Home. Tr. at 190-191.

The LSO states in the Notification Letter that the Individual is unable to work with women or maintain appropriate professional boundaries. Certainly, the information in the record concerning the Individual's history at the Nursing Home, as well as the Individual's statements to the Psychologist, supports the allegation that he has, at times, failed to maintain appropriate

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<sup>12</sup> Given the other evidence in the record, I find the Individual's contrary testimony to lack credibility. Tr. at 192-193.

professional boundaries, which could reflect poorly on his judgment and reliability. However, the evidence in the record, in the form of testimony from his current co-workers and supervisor, indicates that this has not been a recent issue. Tr. at 101, 158-59.

The LSO also cites the Individual's history of nine reprimands during his five years with the Police Department as evidence of his inability to follow rules or regulations. While it is clear that the Individual did exhibit an inability to follow rules or regulations while employed by the Police Department, the testimony of his supervisors and co-workers, as well as numerous letters of recommendation by his present coworkers and supervisors, indicate that this is no longer a present concern. Tr. at 96-106, 139- 162, 164-177; Exhibits A, B, C, D, E, F, G, and H. I therefore find that he has sufficiently mitigated this concern.

The LSO further alleges that the Individual has a history which demonstrates the presence of impaired judgment and reliability. As discussed above, this is true during his employment with the Police Department and the Nursing Home. It also remains true in the present, as demonstrated by his recurrent concealment of his behavior while employed at the Nursing Home, and the lack of insight and remorse that he exhibited at his hearing. *See* Tr. at 224-226. Accordingly, this concern remains unmitigated.

As indicated above, I have found that the Individual has mitigated the security concerns arising from the allegations that he has exhibited "an inability to work with women," and an inability to maintain appropriate professional boundaries. He has, however, not mitigated the security concerns arising from his pattern of dishonesty or his inability to follow rules or regulations. For that reason, I find that the security concerns raised under Criterion L remain unresolved.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criteria F and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not sufficiently mitigated the Criteria F and L security concerns. Accordingly, the Individual has not demonstrated that granting his request for a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should not be granted a security clearance 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.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals

Date: November 25, 2014