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United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing )

Filing Date: February 26, 2015 )

Case No.: PSH-15-0013

Issued: May 14, 2015

**Administrative Judge Decision**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, 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, I conclude that the individual's security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The following facts are undisputed. The individual is employed by a Department of Energy (DOE) contractor, and was issued a security clearance in 2012 in connection with that employment. On a Questionnaire for National Security Positions (QNSP) completed in 2000, the individual indicated that he used marijuana less than 10 times between 1997 and 1999 in

<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>.

response to an inquiry about his illegal drug usage during the preceding seven years.<sup>3</sup> On another QNSP completed in January 2012, the individual indicated that he had not used or been involved in the purchase or sale of any illegal drug during the preceding seven years. In October 2012, the individual responded to a Letter of Interrogatory (LOI) concerning illegal drugs sent by the local security office (LSO), and he did not disclose any further illegal drug involvement. In September 2014, the Office of Personnel Management (OPM) provided additional information to the LSO concerning the individual that was inconsistent with the information that he had given to the DOE. Because these inconsistencies raised security concerns, the LSO summoned the individual for an interview with a personnel security specialist in October 2014. During this Personnel Security Interview (PSI), the individual initially insisted that his illegal drug involvement had been limited to using marijuana on a few occasions during the mid-1990s. However, after being confronted with the information provided by the OPM, the individual admitted that:

- He was not truthful in his responses on his 2012 QNSP, to the 2012 LOI, or during the initial portion of the 2014 PSI;
- From 1996 to 2007 he used marijuana approximately once every 10 months;
- He used cocaine from 2006 to 2009 and sold the drug from 2007 to 2009 to earn some extra money;
- He purchased a total of over six pounds of cocaine from October 2006 through October 2008; and
- His wife was interviewed by the Federal Bureau of Investigation (FBI) regarding her illegal sale of prescription drugs and the individual agreed to purchase cocaine from his supplier at the direction of the FBI in an attempt to keep his wife out of jail.

The LSO determined that this derogatory information cast into doubt the individual's eligibility for access authorization. It informed him of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced eight exhibits into the record of this proceeding. The individual introduced two exhibits, and presented the testimony of two witnesses, in addition to testifying himself.

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

As indicated above, the LSO concluded in the Notification Letter that derogatory information exists that creates a substantial doubt as to the individual's eligibility to hold a security clearance.

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<sup>3</sup> This QNSP was administered in connection with an earlier request for a clearance that was filed on the individual's behalf by the DOE contractor. The processing of that request was administratively terminated when the DOE contractor withdrew its offer of employment.

That information pertains to paragraphs (f) and (k) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.<sup>4</sup>

Criterion (f) refers to information indicating that an individual has deliberately misrepresented, falsified, or omitted significant information from a PSI, a QNSP, or from written or oral statements made in response to official inquiry on a matter that is relevant to a clearance eligibility determination. Under criterion (k), information is derogatory if it indicates that an individual has sold, possessed, or used an illegal drug or misused a prescription drug. In support of these criteria, the Notification Letter cites the individual's involvement with marijuana and cocaine and his conflicting statements about that involvement described above.

This information adequately justifies the DOE's invocation of criteria (f) and (k), and raises significant security concerns. Conduct involving lack of candor or dishonesty can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Use of an illegal drug can also raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about 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, The White House (December 19, 2005), Guidelines E and H.*

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and

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<sup>4</sup> I believe that the individual's history of illegal activity also raises legitimate security concerns under criterion (l), which involves any unusual conduct or circumstances, such as criminal behavior, that tends to show that the individual is not honest, reliable, or trustworthy, or that he may be subject to pressure or coercion that may cause him to act contrary to the best interests of national security. However, because the Notification Letter does not cite that criterion, I will not address it in this Decision.

security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### **IV. ANALYSIS**

##### **A. Mitigating Evidence**

At the hearing, the individual did not deny the allegations set forth in the Notification Letter. Instead, he attempted to show, through his own testimony and that of a friend and of his father, that he is no longer involved in the usage or sale of illegal drugs and that he is now an honest and trustworthy person who can be relied upon to adequately safeguard protected information.

The individual testified that becoming a father in 2009 changed his life. He stopped selling and using illegal drugs at that time, has had no illegal drug involvement since, and will not use or sell illegal drugs in the future. Hearing Transcript (Tr.) at 38, 40. He further testified that not being honest with the DOE was “one of the biggest mistakes of [his] life,” and one that he sincerely regretted. Tr. at 39. He explained that he did not disclose the full extent of his drug involvement because he feared not getting the job and not being able to support his two children. Tr. at 39-40. The individual concluded that he has made “terrible mistakes” and “regrets them like you wouldn’t believe,” but that going through this administrative review process has “opened [his] eyes,” and that he is “an honest person now.” Tr. at 40-41. The individual’s friend and father both attested to the individual’s honesty, and both indicated that, to their knowledge, the individual had not used illegal drugs since 2009. Tr. at 10, 14, 26, 27. The individual also submitted the results of two drug screenings that were administered to him. They were both negative for the use of any illegal substance.

##### **B. Administrative Judge’s Determination**

Based on the testimony and other evidence described above, I find that the individual has adequately addressed the DOE’s security concerns under criterion (k) concerning his history of illegal drug involvement. At the outset, I find it plausible that someone would cease illegal activities upon assuming the responsibilities of parenthood, and the individual’s testimony that he did just that is supported by the testimony of his friend and of his father, and by the negative results of the two drug screenings. Because of the passage of six years since his last involvement with illegal drugs and because of his changed life circumstances, I find it unlikely that the individual will become involved with illegal drugs in the future. *See Adjudicative Guidelines ¶26(a)* (the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment).

I reach a different result, however, with regard to the DOE’s criterion (f) concerns. The individual made a concerted effort over a period of approximately two years to conceal from the DOE the true extent of his illegal drug involvement. During that period, he deliberately provided false, incomplete or misleading information on his 2012 QNSP and in response to the 2012 LOI,

and he lied repeatedly during the initial portion of his 2014 PSI. The information withheld included his usage and sale of cocaine from 2006 to 2009, and his purchases totaling in excess of six pounds of the drug during that period. He maintained this deception until he was confronted, during the latter stages of his 2014 PSI, with the information that the DOE obtained from the OPM. Although the individual testified that he “would like to believe” that he eventually would have disclosed the full extent of his drug involvement to the DOE without being confronted with the information, there is nothing in the individual’s prior behavior that would support such a belief. It is likely that the DOE would still be unaware of the full extent of the individual’s history of drug involvement had it not received the OPM information.

Finally, the mitigating factors applicable to the DOE’s security concerns under criterion (k) are not applicable to the agency’s criterion (f) concerns. The passage of time is not a mitigating factor, as the individual’s last instance of falsification occurred in October 2014, only six months prior to the hearing. Moreover, there is no evidence of any substantial change in the individual’s life circumstances, or in the individual himself, during that period. There are no significant mitigating factors regarding the DOE’s security concerns under criterion (f).

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has adequately addressed the DOE’s concerns under criterion (k) concerning his illegal drug involvement, but that serious security concerns remain under criterion (f). Consequently, he has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual’s security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: May 14, 2015