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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:	June 22, 2015 )		
	)	Case No.: PSH-15-0053	
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Issued: October 15, 2015  
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**Administrative Judge Decision**  
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Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 request for access authorization should be granted.

**I. Background**

The individual is an applicant for DOE access authorization in conjunction with his employment by a DOE contractor. Police reports obtained during the security investigation of the individual indicate that, in 2011, the individual's truck was impounded for being parked on private property and the individual was implicated in burglarizing the impound lot and stealing his truck from the lot. The truck was found in the individual's driveway shortly after the burglary was reported by the impound lot. According to police reports, the individual acknowledged stealing his truck from the lot. See Exhibit 2. The individual was arrested for burglary; however, no charges were ever filed against him. See Exhibit 11 and Exhibit B.

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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.

Following receipt of the police reports, the Local Security Office (LSO) conducted Personnel Security Interviews (PSIs) with the individual on February 26, 2015, and March 24, 2015. *See* Exhibits 5 and 6. During the PSIs, the individual denied taking his truck from the impound lot and denied admitting to police that he had taken his truck from the lot. He stated that, on the night of these occurrences, he had lent his truck to a friend and he had been at home with his then-girlfriend and their infant son. *Id.* During the second PSI, the LSO confronted the individual with information that a police officer had identified the individual from a photographic lineup as a person who, approximately one hour prior to the burglary report, had flagged down the officer outside of a night club to report a stolen truck. *See* Exhibits 3, 4, 6, and 10. According to police reports, the police officer informed the person attempting to report the stolen truck that it had been towed and had given the person the address of the impound lot. *See* Exhibits 2 and 3. Confronted with this information by the LSO, the individual continued to claim that he had been home at that time and had not taken the truck from the lot. *See* Exhibit 6.

Since the LSO was unable to resolve the discrepancies between the police reports and the information provided by the individual during the PSIs, the LSO informed the individual in a letter dated May 18, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. 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 (l) (hereinafter referred to as Criterion L),<sup>2</sup> and stated that the specific concern related to the individual deliberately providing false or misleading information in connection with a personnel security determination. *See* Exhibit 1.

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 Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 11 numbered exhibits into the record and presented the testimony of one witness, the police officer who had identified the individual in a photographic lineup as the person the officer had directed to the impound lot. The individual, represented by counsel, introduced 13 lettered exhibits (Exhibits A – M) into the record and presented the testimony of two witnesses, himself and his former girlfriend. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>3</sup>

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<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.energy.gov/oha](http://www.energy.gov/oha).

## **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 granting or restoring his or 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 his or 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Administrative Judge's Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 cited one criterion as the basis for denying the individual's security clearance: Criterion L. Criterion L concerns information that an individual has engaged in conduct “which tends to show that the individual is not honest, reliable, or trustworthy....” 10 C.F.R. § 710.8(l). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an “individual's reliability, trustworthiness and ability to protect classified information.” See 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). With respect to Criterion L, the LSO cites the individual's

denial of the behavior described in the police reports (i.e., that the individual had stolen his truck from the impound lot and that the individual had admitted to the police that he had done so) and states that such denial disqualifies him for access authorization because it: (1) evidences that the individual deliberately provided “false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination” and (2) represents “personal conduct or concealment of information that may increase an individual’s vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person’s personal, professional, or community standing or render the person susceptible to blackmail.” Ex. 1 at 5-7, citing Adjudicative Guidelines at Guideline E, ¶ 16(c) and (d), respectively.

In light of the information available to the LSO, the LSO properly invoked Criterion L.<sup>4</sup>

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

On Friday, July 1, 2011, the individual and a friend drove from the individual’s house to a restaurant in the individual’s truck.<sup>5</sup> Tr. at 18. At approximately 7:00 p.m., the individual’s then-girlfriend met the individual outside of the restaurant and they returned to the individual’s home in her vehicle. *Id.* at 77. The individual left his truck at the restaurant with his friend, with the understanding that the friend would return it at the end of night or the next day. *Id.* at 19. The individual stayed at his home with his then-girlfriend and their infant son for the rest of the night and did not leave until he was arrested on Saturday, July 2, 2011, at approximately 3:15 a.m. *Id.* at 21, 70.

On Saturday, July 2, 2011, at approximately 2:15 a.m., a private towing company reported a burglary from its impound lot. Ex. 2 at 1-2. A couple of hours earlier, the company had towed the individual’s truck to its impound lot at the request of a private parking lot where the truck had been parked without permission; when the operator of the towing company returned to his impound lot after a subsequent call, the lock to his lot had been cut and the individual’s truck taken from the lot. *Id.* at 3. The responding police officer found no evidence of broken glass or vehicular damage where the truck had been parked. *Id.* The police officer recalled a radio call approximately one hour earlier from another police officer reporting that a male had approached him outside of a night club to report a stolen truck; the dispatcher had advised the officer that the truck had been impounded; and the officer had advised the person attempting to report the stolen vehicle

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<sup>4</sup> Based on the security concerns as alleged in the Notification Letter, the LSO could also have cited Criterion F (derogatory information that an individual has “deliberately misrepresented, falsified, or omitted significant information ... on a matter that is relevant to a determination regarding eligibility for DOE access authorization....”). 10 C.F.R. § 710.8, subsection (f).

<sup>5</sup> The truck in question is a pick-up truck that, in July 2011, was legally owned by the individual’s father and registered in the father’s name. Tr. at 18-19; Ex. 2 at 3. For convenience of reference, this Decision will generally refer to the truck as the “individual’s truck.”

that the vehicle had been impounded and provided him with the address of the impound lot. *Id.*

The police in a neighboring jurisdiction contacted the individual's father as the registered owner of the missing truck. The father provided the police with the name and address of the individual, as person who actually used the truck. The father contacted the individual and informed the police that a friend of his son had the truck that night. *Id.*

At approximately 3:15 a.m., the police officer investigating the burglary went to the individual's residence, where the individual's truck was parked in his driveway. According to the officer's written police report, the officer asked the individual to step out of his residence and read the individual *Miranda* warnings. *Id.* at 1, 3. The officer then "lied to [the individual] and told him that there were cameras in the impound lot, and asked why they would show him taking the vehicle from the lot." *Id.* at 3. The officer reported that the individual became "more nervous" and, when the officer "told him *something like*, 'Your truck was impounded, you tried to report it stolen, and the officer told you where it was, so you went and took it,'" the individual "nodded his head up and down and said, 'Yes.'" *Id.* at 4 (emphasis added). According to the police report, the individual then said "he needed to go to the station and give a statement and to talk to his lawyer, and was not going to say nothing else." *Id.* At that point, the officer arrested the individual. *Id.*

On Tuesday, July 5, 2011, the individual was released from the municipal jail and provided with a copy of a letter from the local prosecutor stating that the prosecutor would not be filing charges or further holdings against the individual at that time. Tr. at 57-59; Ex. B. The individual was not thereafter contacted by the police or the prosecutor concerning the burglary and first learned of the police reports during the LSO's investigation of his eligibility for access authorization. Tr. at 55.

On July 19, 2011, a supplemental report was filed by a police officer stating that on July 2, 2011, at 1:04 a.m., he had been flagged down outside of a night club by three males, one of whom stated that he wanted to report his truck stolen. When the officer called in the description of the truck, the police dispatcher informed him the truck had been impounded for being parked on private property. The officer gave this information, together with the name and address of the impound lot, to the person attempting to report the stolen vehicle and cleared the call. The officer recorded a general description of the person (Hispanic male, 20's, black shirt, clean cut, light skinned), but did not get his name. Ex. 3 at 1.

On July 26, 2011, a supplement report was filed by a third police officer stating that on the previous day he met with the officer who had been flagged down outside of the night club on July 2, 2011, and presented the officer with a photographic line-up of potential suspects in the burglary of the truck from the impound lot. The line-up included the individual, but not the friend who the individual had identified as having borrowed his truck that evening. The officer identified the individual as the person who had approached him outside of the night club and had attempted to report a stolen truck. Ex. 4 at 1; Ex. 10.

At the hearing, the identifying police officer testified at the request of the LSO. He testified that he recalled the person attempting to report the stolen truck on July 2, 2011, he could envision the physical setting of their conversation, and he had spent four-to-five minutes having a face-to-face discussion with him. Tr. at 93-96, 108, 113-14, 123. He testified that he was 100% confident of the accuracy of his identification. *Id.* at 98. He expressed greater confidence during his testimony than he had when interviewed by the DOE counsel prior to the hearing. *Id.* at 128. When the individual entered the hearing room, the officer stated that he did not recognize the individual in any way at all and that he did not look familiar. *Id.* at 132.

Notwithstanding the police officer's original photographic identification, the individual was not the person who attempted to report a stolen truck outside of a night club on July 2, 2011, at 1:04 a.m. *Id.* Further, the individual did not participate in the burglary of the impound lot and had no knowledge of the burglary until he had been contacted by his father, which occurred after the police contacted his father as the registered owner of the truck that had been removed from the impound lot. *Id.* at 22-23.

## **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>6</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be granted. The specific findings that I make in support of this decision are discussed below.

### **A. Mitigating Evidence**

The individual does not dispute that his truck was towed after being illegally parked on private property near a night club or that the private lot where the truck was impounded was burglarized shortly thereafter and his truck taken. The individual also does not dispute that his truck was in his own driveway when the police arrived at his residence within hours of the reported burglary. Tr. at 22. However, he does dispute that he was involved in those events and argues that his arrest resulted from mistaken identification.<sup>7</sup> *See Id.* at 136.

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<sup>6</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.

<sup>7</sup> The individual also argues that he may have been targeted by police due to either (1) animosity towards him by a member of the local police force (who was related to his then-girlfriend) or (2) ethnic bias. These arguments and the evidence presented in support of them are speculative; speculation is insufficient to

At the hearing, the individual testified as the first witness. He testified that on Friday, July 1, 2011, he and a friend had met at the individual's house and travelled together in his truck to a restaurant for a light meal and drinks. He had plans to spend the evening with his then-girlfriend. His girlfriend telephoned while he was still at the restaurant and they agreed that she would pick him up at the restaurant. The individual, who lent his truck to his friend on prior occasions, left his truck with his friend on the understanding that it would be returned at the end of night. (The friend lived within walking distance of the individual's home.) The individual and his girlfriend spent the balance of the evening with their one-year old son at the individual's home watching television; they had put their son to bed around 10:00 p.m. and they went to bed around midnight. Around 2:00 or 3:00 a.m., they were awakened by his father telephoning him to ask him about the truck being stolen. *Id.* at 18-23, 33, 35-38, 44. The individual testified that he was confused because, when he got up to check his driveway, his truck was there and he did not understand why it was being reported as stolen. *Id.* at 22-23. While the individual was on the phone with his father, the police knocked on his door and asked him to step outside. *Id.* at 23; Ex. 2 at 3.

The individual disagrees with certain aspects of the police report. He testified that to the extent that he was nodding his head, he was doing so to indicate that he was listening, not agreeing. Tr. at 25-26. He testified that initially he was not nervous, but confused by being awakened in the middle of the night over reports of his truck being stolen when it was sitting in his driveway. *Id.* at 24. He testified that the police officer stated that there was video tape of him breaking into an impound lot and taking his truck, which the individual knew could not be true. *Id.* The officer then asked for the individual's side of the story, but said he needed to first read him the *Miranda* warnings. *Id.* at 26. The individual presumed that if he was being read *Miranda* warnings, he was being accused of a crime and told the officer that he would make no further statements and requested to speak to his attorney. *Id.* at 26-27.

The second witness to testify at the hearing was the individual's former girlfriend, who had been sequestered during the individual's testimony. She testified that on July 1, 2011, at around 7:00 p.m., she had picked up the individual from a restaurant where he had gone with one of his friends and she drove them in her car to the individual's home, where the two of them spent the rest of the night with their infant son. She was aware the individual had left his truck with his friend and testified that the individual regularly lent his truck to friends. She also testified that the individual could not have left the house that evening without her being aware of it and that he was there until the police arrived in the early morning hours. *Id.* at 66-71, 77-82.

The final witness at the hearing was the police officer who had identified the individual in a photographic lineup as the person who had attempted to report a stolen truck outside of a night club on July 2, 2011, at 1:04 a.m. Ex. 4; Ex. 10. The police officer was called by the LSO as a witness. He testified that he could clearly visualize the corner where he

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remove doubt as to one's eligibility for access authorization and, therefore, I deemed these arguments to be without merit in reaching my determination under Part 710. *See* 10 C.F.R. § 710.7(a).

had had the conversation with the person that morning; that he had had a solid four-to-five-minute face-to-face conversation with the person; that, even though it was 1 a.m., the corner was well-lighted; that he himself had a truck so he remembered the details of the truck that was being reported as stolen; that he had an incredibly good memory for faces; and that he was 100% confident of his identification of the individual, even though over three weeks had elapsed between his conversation with the person outside the nightclub and his photographic identification of the individual. Tr. at 93-96, 98, 108, 113-14, 123. The DOE counsel commented to the officer that his confidence in his identification seemed greater at the hearing than when she had interviewed him prior to the hearing. *Id.* at 128. During his testimony, the DOE counsel presented the officer with the photographic lineup from which he made his original identification. He remembered which suspect that he had identified. Ex. 10; Tr. at 97-98. When the individual's counsel showed the officer a photograph of three males (all of whom matched the description of the person described by the officer in his police report and included the individual and his friend who the individual had testified had borrowed his truck that evening), the officer did not testify that he recognized any of them. Ex. L; Tr. at 87, 122-23.

During the portion of the officer's testimony summarized above, the individual was absent from the hearing room at the request of his counsel. When the individual's counsel brought the individual into the hearing room, the police officer still had in front of him two photographs of the individual (including the photograph of the individual that was part of the original photographic lineup). The individual's counsel asked the officer if he could identify the individual and, at that point, the officer testified that he did not recognize the individual in any way at all and he did not look familiar, adding "And if I know him, I apologize ... I don't recognize him." *Id.* at 132.

## **B. Administrative Judge Evaluation of Evidence**

The security concerns in this case revolve around two discrepant versions of the early morning hours of July 2, 2011. The LSO's security investigation of the individual uncovered police reports that are in stark contrast to the information provided by the individual. The police reports support a conclusion that the individual committed a crime (burglarizing an impound lot and removing his impounded truck) and that he acknowledged to the police that he had done so. *See* Ex. 2-4. The individual has consistently denied both the crime and any acknowledgment of it. The Criterion L security concern described in the Notification Letter is focused upon the individual's denial. According to the Notification Letter, the security concern does not arise directly from criminal conduct which evidences a lack of honesty, reliability or trustworthiness. Rather, the LSO assumes the correctness of the police reports and asserts that the individual's denial of those reports evidences (1) that he has deliberately provided false and misleading information in connection with a personnel security determination and (2) concealment of information that may increase his vulnerability to coercion, exploitation or duress. Ex. 1 at 5-7.

As noted above, the LSO's security concerns are based upon written reports of a municipal police department. Police reports prepared in the ordinary course of law enforcement activities are routinely accepted by Administrative Judges as evidencing the



information described therein. *See Personnel Security Hearing*, Case No. PSH-13-0124 (April 23, 2014). However, this does not mean that police reports are immune from challenge or from objective analysis of the information contained therein.

The LSO cites the arresting officer's report in support of both the individual having committed the burglary and admitting to the burglary. The arresting officer's report<sup>8</sup> contains both factual statements and conclusions. The officer reported that the individual appeared nervous and became more nervous during the questioning. Ex. 2 at 3. The officer uses his conclusions about the individual's emotional state to suggest culpability. On the other hand, the individual credibly testified that he was not initially nervous, but confused by being awakened in the middle of night and by questions about his truck being stolen when it was parked in his driveway. The individual testified that he only became nervous and irritated when the officer stated that the individual had been videotaped burglarizing the impound lot, when the individual knew that was untrue. Tr. at 24-26. The officer's report acknowledges that this was a "lie." Ex. 2 at 3. That a person would be confused by the circumstances of the questioning or nervous when being confronted with a false accusation are reasonable responses and, in this case, do not support a negative inference.

Additionally, the police report states that the officer presented a scenario to the individual without including in the police report the exact scenario that was presented – instead, the police report prefaces the description of the scenario with a statement that the officer said "*something like*." *Id.* at 4. The report infers that because the individual nodded his head up and down and said "yes" at some point during the officer's scenario, the individual acknowledged committing the crime. The individual does not dispute nodding his head while the officer questioning him, but testified that he commonly shakes his head when someone is speaking as a way of signaling that he is listening. Tr. at 26. The individual's explanation is in accord with common cultural practices and understandings that nodding while someone is speaking frequently signals *listening* to a speaker, as opposed to *agreement* with a speaker. In the circumstances described by the police report and clarified by the individual's credible testimony, I do not conclude that the behavior described in the police report constituted an acknowledgment by the individual that he had committed a crime.

Further, the officer stated that this "admission" followed his having read the individual *Miranda* warnings. Ex. 2 at 3. The individual credibly testified that he has professional knowledge of *Miranda* warnings and that the *Miranda* warnings occurred after his purported "admission." The individual credibly testified that once he was read *Miranda* warnings he realized that he was being accused of a crime and informed the officer that he would make no further statements without legal counsel. Tr. at 24-27. I find the individual's recollection of the sequence of events to be more credible than the sequence set forth in the police report (i.e., that the individual was read his rights; immediately

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<sup>8</sup> The arresting officer resigned from the municipal police department approximately six months after the date of this report. According to his former colleague who testified at the hearing at the request of the LSO, the arresting officer resigned in order to avoid disciplinary proceedings against him. Tr. at 119-20.

admitted the crime; and, immediately after confessing, said he would make no further statements without his attorney). Ex. 2 at 3-4.

The second set of incriminating police reports relate to the individual being identified by a police officer as the person the officer directed to the impound lot after the person had attempted to report a stolen truck. *See* Ex. 3 and 4. As noted previously, the officer testified at the hearing that he has very good recollection of faces, was 100% confident of his photo-identification of the individual as the person he directed to the impound lot and clearly remembered the physical setting in which they had had their conversation. Tr. at 93-96, 98, 108, 113-14, 123. Notwithstanding his certainty with respect to his identification of the individual from the photographic lineup<sup>9</sup> (which was in front of him during his testimony), once the individual was brought into the hearing room for the officer to identify, the officer testified that he in no way recognized the individual.<sup>10</sup> *Id.* at 132. Based on the officer's testimony that he did not in any way recognize the individual, the individual has resolved the security concerns arising from the officer's photographic identification.

At the hearing, the individual provided consistent, cohesive, credible testimony that supported his lack of involvement in crime: he was at home while a friend was using his truck and he first learned of the impoundment and burglary from the subsequent police investigation. His testimony was corroborated on all key points by the testimony of his then-girlfriend,<sup>11</sup> whom he was with during the entire period of time in question. Although the former girlfriend's testimony was equally credible, its reliability was enhanced by the current lack of an intimate relationship between her and the individual.<sup>12</sup> The testimonies of the individual and his former girlfriend were undiminished by thorough cross-examinations by the DOE counsel.

Based on the foregoing, I find that the individual's account of the events on the evening of July 1, 2011, and the morning of July 2, 2011, are factual correct and that the individual did not burglarize the impound lot or improperly remove his truck from the lot, and, further, that he did not acknowledge to the municipal police that he had done so. In light of the foregoing, the individual did not make any false or misleading information to the LSO and has resolved the security concerns arising under Criterion L. *See* 10 C.F.R.

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<sup>9</sup> Although the individual was attired differently at the hearing than he was in the booking photograph, his style of personal grooming at the hearing was seemingly identical to that in the booking photograph.

<sup>10</sup> Absent from the transcript is the identifying officer's facial expression when he first saw the individual walk into the room, which was of noticeable surprise or dismay.

<sup>11</sup> The authenticity of their testimony was reinforced by certain minor discrepancies. For example, the individual testified that they had watched television that evening and, when pressed by the DOE counsel as to what they watched, the best he could answer was that his then-girlfriend "likes her girl shows." Tr. at 43. The then-girlfriend testified that they watched movies (Netflix's) and thought they probably watched "my Drop Dead Divas." *Id.* at 85.

<sup>12</sup> The individual and his former girlfriend continue to have a co-parenting relationship with respect to their son; she is now married to someone else. Tr. at 66.

§ 710.7(a) (absent derogatory information, a favorable determination shall be made as to access authorization eligibility); *Cf.* Adjudicative Guidelines at Guideline E, ¶ 17(f) (security concerns may be mitigated when the information is unsubstantiated or from a source of questionable reliability).

## **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 L. 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 resolve the security concerns associated with Criterion L. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: October 15, 2015