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June 27, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: March 7, 2011
Case Number: TSO-1016

This Decision concerns the eligibility of XXXX X. XXXXX (hereinafter referred to as “the Individual”) to obtain a security clearance 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, I have determined that a security clearance should not be granted to the Individual.

I. BACKGROUND

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the Local Security Office (LSO) characterized this information as indicating that the Individual had deliberately misrepresented or omitted required information during the DOE security clearance process, had engaged in illegal drug use, engaged in unusual conduct which brought his honesty, trustworthiness, and reliability into question, and been diagnosed by a psychiatrist as suffering from alcohol abuse, an illness or mental condition of a nature which causes, or may cause, a significant defect in judgment or reliability.¹

¹ The Notification Letter alleges that the Individual has: (1) “[d]eliberately misrepresented, falsified, or omitted significant information from a Questionnaire for Sensitive (or National Security) Positions . . . 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); (2) “[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law,” 10 C.F.R. § 710.8(k); (3) “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability,” 10 C.F.R. § 710.8(h); (4) “[b]een, or is, a

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on March 9, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his girlfriend, his supervisor, his union steward, four of the Individual's coworkers and a DOE consultant psychiatrist (Psychiatrist B). *See* Transcript of Hearing, Case No. TSO-1016 (hereinafter cited as "Tr."). The LSO submitted 31 exhibits, marked as Exhibits 1 through 31, while the Individual submitted three exhibits, marked as Exhibits A through C.

II. FINDINGS OF FACT

The present proceeding involves an Individual who has an extensive pattern of criminal activity. In 1986, he vandalized a motor vehicle. In September 1989, he was cited for soliciting a prostitute. He was arrested for Driving While Intoxicated (DWI) on five occasions: April 27, 1989, August 19, 1989, May 19, 2000, April 9, 2005, and October 26, 2005. On March 21, 1991, the Individual was arrested for Domestic Violence.

In 1990, the Individual received 12 weeks of treatment for alcohol abuse. Exhibit 4 at 3. The Individual was evaluated by a counseling agency (the Counseling Agency) in December 2005. The Counseling Agency diagnosed him with alcohol dependence. *Id.* at 8. As part of the Individual's treatment plan, he was required to attend at least two Alcoholic's Anonymous (AA) meetings a week, a weekly individual counseling session and a weekly group counseling session. *Id.* The Individual stopped attending AA meetings and discontinued counseling in December 2008. *Id.*

The Individual has completed, signed, and submitted at least 13 Questionnaires for National Security Positions (QNSP) to the LSO during the time period beginning on March 9, 1992, and ending on February 5, 2010.² The LSO has conducted at least five Personnel Security Interviews of the Individual: the first was conducted on January 21, 1993, and the most recent was conducted on September 22, 2010.³

user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse," 10 C.F.R. § 710.8(j); and (5) "[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 interests of the national security," 10 C.F.R. § 710.8(l).

² Copies of these QNSPs appear in the record as Exhibits 14 through 26.

³ Transcripts of these PSIs appear in the record as Exhibits 27 through 31.

On January 21, 1993, the Individual signed a DOE Drug Certification.⁴ The Individual has also signed at least 11 DOE Security Acknowledgements during the time period beginning on June 14, 1993, and ending on November 20, 2009.⁵ The Individual has admitted that he used marijuana on one or two occasions while holding a security clearance in 1994 or 1996.⁶ Exhibit 6 at 10. In his August 4, 2004, PSI, the Individual admitted that he had violated his DOE Drug Certification on multiple occasions. Exhibit 28 at 35-38.

The LSO has documented at least 31 instances in which the Individual has intentionally provided false or misleading information in his QNSPs in order to conceal his arrest record, involvement in alcohol-related incidents, termination from employment resulting from his misconduct, and illegal drug use. The LSO has also documented at least four instances where the Individual has intentionally provided false information during a PSI, in order to conceal his criminal conduct, alcohol use, and illegal drug use. The LSO has documented at least two instances where the Individual has intentionally provided false information to a DOE Psychiatrist during a psychiatric evaluation, in order to conceal the extent of his alcohol use.

The Individual has been evaluated by DOE psychiatrists on at least two occasions. He was evaluated by DOE Psychiatrist A, on October 15, 2005. Psychiatrist A issued a report of his evaluation on October 25, 2005.⁷ Psychiatrist A found that the Individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition, Text Revision (DSM-IV-TR). Psychiatrist A further found that the Individual did not show adequate evidence of rehabilitation or reformation.

Psychiatrist B conducted a psychiatric evaluation of the Individual on October 28, 2010. Psychiatrist B issued a report of his evaluation on November 1, 2010.⁸ During this psychiatric evaluation, the Individual informed Psychiatrist B that he continues to drink in moderation. Exhibit 4 at 8. The Individual also opined that he is not an alcoholic. *Id.* Psychiatrist B found that the Individual met the criteria for alcohol abuse, set forth in the DSM-IV-TR. Psychiatrist B also opined that the Individual should never attempt to drink in moderation. *Id.* at 1. Psychiatrist B further found that the Individual did not show adequate evidence of rehabilitation or reformation.

The Individual has also admitted that he has engaged in extensive illegal drug use. During his October 28, 2010, psychiatric evaluation, he admitted using marijuana during a hunting trip that occurred in 2007 or 2008. Exhibit 4 at 1, 10 and 15. During the September 22, 2010, PSI, the Individual admitted using marijuana and cocaine from the early 1980s until 2004. Exhibit 22 at 10-31. The Individual submitted QNSPs on February 5, 2010, and November 20, 2009,

⁴ This DOE Drug Certification appears in the record as Exhibit 12.

⁵ These DOE Security Acknowledgments appear in the record as Exhibit 13.

⁶ The Individual had maintained a security clearance from May 19, 1993, until June 12, 2000. Exhibit 4 at 3.

⁷ A copy of the October 25, 2005, psychiatric report appears in the record as Exhibit 6.

⁸ A copy of the November 1, 2010, psychiatric report appears in the record as Exhibit 4.

reporting that he had used marijuana on approximately 30 occasions from December 2005 to July 2006. Exhibits 14 and 15. On July 16, 2004, the Individual tested positive for marijuana. Exhibit 9.

III. STANDARD OF REVIEW

The Hearing Officer'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 or 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). I have considered the following factors in rendering this opinion: 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. ANALYSIS

A. Criterion F

The Notification Letter alleges that the Individual omitted or provided false information to LSO officials on at least 38 occasions about his illegal drug use, arrest record, alcohol use, and criminal activities. This extensive pattern of omission, falsification, and minimization raises serious concerns about the Individual under Criterion F. Deliberately omitting or concealing relevant facts, or providing false information in a process for determining eligibility for access authorization demonstrates questionable judgment and lack of candor, and can also raise 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).

The Individual's testimony has not resolved the security concerns arising from his omissions. The Individual testified that many of these omissions or provisions of incorrect information have occurred because he misunderstood the questions being posed to him, or because he was unable to recall past occurrences accurately. The Individual further testified that his omissions and provisions of false information resulted from “the thing that alcohol and drugs do to a person.” Tr. at 115. He also testified that as a result of his involvement with AA and counseling he has “learned a lot” and become a better person. Tr. at 74. However, the Individual's testimony at the hearing only made it more difficult to believe that he was not trying to conceal the truth when he omitted or provided false information to LSO officials.

During the Individual's testimony he repeatedly contradicted himself. For example, the DOE Counsel confronted the Individual with his contradictory statements concerning his last use of alcohol. The DOE Counsel noted that, during his September 22, 2010, PSI, the Individual had stated that he was last intoxicated in 2004, while during his October 28, 2010, psychiatric evaluation, the Individual told Psychiatrist B that he was last intoxicated at his birthday party in March 2010. Tr. at 69-70. The Individual responded by stating

Yes, I did tell [Psychiatrist B] that, but I don't understand why I told him that, because, like I stated, there was no party, there was a dinner between [my girlfriend] and myself, and there was no drinking. I don't – I can't honestly say why I said anything of a party going on. I didn't lie to him. There was no party. I mean, I did tell him that, but I really don't have a good explanation for that, sir.

Tr. at 71-72.

When the DOE Counsel confronted the Individual with his admission to Psychiatrist B that his last use of marijuana took place during a hunting trip that occurred in 2007 or 2008, the Individual denied that he had smoked marijuana or had even been hunting during those years. Tr. at 77. However, the Individual acknowledged that he had, in fact, admitted using marijuana on a hunting trip to Psychiatrist B. *Id.*

The DOE Counsel confronted the Individual with his admission, during his September 22, 2010, PSI, that he had used illegal drugs on approximately 30 occasions. Tr. at 116. The Individual testified "I don't agree with that amount. I don't think it was even close to that." *Id.*

The DOE Counsel confronted the Individual with the fact that he had indicated, in his February 6, 2010, QNSP, that he had left employment at a DOE subcontractor in 2004 due to a reduction in force, when in fact he had been fired for failing a drug test. Tr. at 119-120. The Individual responded by admitting he had been using drugs and had failed the drug test. But the Individual further testified that he was not fired and that he had reported that incident in the QNSP. *Id.* at 120. The DOE Counsel invited the Individual to identify that portion of his February 6, 2010, QNSP where he had reported that he had failed a drug test. *Id.* The Individual first claimed that the copy of the February 5, 2010, QNSP that appears in the record⁹ was not accurate and complete. *Id.* at 123. The Individual eventually admitted that he could not show that he had reported his positive drug test in the QNSP. *Id.* at 127.

The DOE Counsel asked the Individual whether he used illegal drugs while holding a security clearance. The Individual stated "I never used drugs while I had the clearance in my hand, while it was with me." Tr. at 148.

The Individual's demonstrated lack of candor during the hearing has prevented him from mitigating the security concerns raised by the 38 documented instances of deliberate omission or provision of false information set forth in the statement of charges. While the Individual claims that his omissions and provisions of false information were unintentional, his willingness to

⁹ See Exhibit 14.

repeatedly prevaricate under oath at the hearing strongly suggests otherwise. Moreover, the continuation of the Individual's pattern of dishonesty during the hearing belies his contention that he is now a changed and more honest person.

For the reasons set forth above, I find that the Individual has not resolved the security concerns raised under Criterion F.

B. Criteria J and H

The Individual has a history of at least five DWIs: on April 27, 1989, August 19, 1989, March 21, 1991, May 19, 2000, and October 26, 2005. In addition, the Individual has admitted consuming six beers prior to his March 21, 1991, arrest for Domestic Violence. Exhibit 4 at 4. This pattern of alcohol-related arrests and other information indicating that his use of alcohol might be problematic raise security concerns about the Individual under Criterion J. In addition, two DOE psychiatrists have diagnosed the Individual with alcohol abuse. This diagnosis, along with the derogatory information concerning alcohol discussed above, raises security concerns under Criterion H. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. In addition to the evidence in the record showing that at least three mental health care professionals have diagnosed the Individual with an alcohol related disorder, the Individual himself now acknowledges that he has a serious problem with alcohol, and is a "recovered" alcoholic. Tr. at 131, 163-164. Yet the Individual also testified that he no longer has an alcohol problem. *Id.* at 163.

The remaining issues under Criteria J and H are whether the Individual is reformed or rehabilitated. The Adjudicative Guidelines provide that an individual can mitigate security concerns arising from alcohol abuse when "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence . . . or responsible use." Adjudicative Guidelines at ¶ 23(b).

The Individual has submitted evidence that he has attended a substantial number of AA meetings. Exhibit A. However, the Individual stopped attending AA meetings in 2008. Moreover, the Individual began receiving individual counseling from his Employee Assistance Program (EAP) on March 21, 2011, less than two months prior to his hearing. The Individual's EAP counselor was not present at the hearing.

The Individual also claims that he has stopped consuming alcohol. The Individual testified that he last consumed alcohol at a professional football game in September 2010, approximately eight months prior to the hearing. Tr. at 136. However, the Individual would not commit to permanent abstention from alcohol and testified that he believes it is safe for him to drink in moderation.¹⁰ *Id.* at 139, 164.

The Individual has not mitigated the security concerns raised by his alcohol abuse and problematic alcohol use. Psychiatrist B was present for the testimony of each of the other witnesses during the hearing. After the other witnesses had concluded their testimony,

¹⁰ However, the Individual subsequently testified that he had decided to "keep alcohol out of [his] life." Tr. at 146.

Psychiatrist B testified. Psychiatrist B testified that he continued to believe that the Individual is not sufficiently reformed or rehabilitated. I agree with his assessment. The Individual has not sufficiently acknowledged his issues of alcohol abuse. Moreover, my concerns about the Individual's credibility, discussed at length above, make it difficult to rely on his self-reported recent drinking history. Accordingly, I find that the Individual has not mitigated the security concerns raised under Criteria H and J.

C. Criterion K

The LSO has invoked Criterion K, noting the Individual has admitted extensive marijuana use from the 1980s through as recently as 2007, and experimentation with cocaine. The use of an illegal drug, such as marijuana or cocaine, raises questions about an individual's reliability and trustworthiness, both because illegal drug use may impair judgment and because engaging in illegal activity raises questions about a person's ability or willingness to comply with laws, rules and regulations. Adjudicative Guidelines at ¶ 11 (Guideline H).

At the hearing, the Individual attempted to deny (or minimize) his previous drug use, and to claim that he no longer uses illegal drugs. Tr. at 147-149. However, given his previous reporting of cocaine experimentation and extensive marijuana use, as well as the Individual's lack of credibility, as discussed at length above, the Individual has not convinced me that he did not use marijuana extensively and as recently as 2007. In fact, given the Individual extensive history of lying to the LSO, often about his illegal drug use, I cannot trust the Individual's assertion that he no longer uses illegal drugs. Accordingly, the security concerns raised under Criterion K by his extensive and recent illegal drug use have not been resolved.

D. Criterion L

The Individual has a significant history of criminal conduct and other rule violations. The Notification Letter sets forth a history of at least six arrests, extensive illegal drug use, multiple falsifications during security clearance investigations, illegal drug use while employed at a DOE facility after having signed several DOE security acknowledgements that illegal drug use was against DOE policy, and multiple violations of a DOE Drug Certification signed by the Individual. In addition, the Individual has a pattern of leaving at least five different employers under unfavorable circumstances. This information raises security concerns under Criterion L.

“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 Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30. Moreover, the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary

responsibilities” raises serious security concerns. *Id.* at ¶ 16.

The sheer volume of well documented security concerns raised under Criterion L raise particularly grave concerns about the Individual’s judgment, reliability and trustworthiness. The Individual has repeatedly shown that he is either unwilling or unable to follow laws, rules and regulations. Moreover, the Individual’s actions show that he cannot be trusted to provide truthful information, and that he has a propensity to fail to uphold his promises. The Individual’s lack of candor at the hearing shows that he continues to exhibit poor judgment, and cannot be relied upon or trusted. Accordingly, I find that the security concerns raised under Criterion L remain unresolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria F, H, J, K, and L. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that granting his 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. 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
Hearing Officer
Office of Hearings and Appeals

Date: June 27, 2011