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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: February 1, 2018)	Case No.: PSH-18-0013
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Issued: April 26, 2018

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to retain an access authorization under the Department of Energy’s (DOE) 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.”¹ For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017)(Guidelines), I conclude that the Individual’s security clearance should be restored.

I. BACKGROUND

The Individual is currently employed by a DOE-contractor and possessed a DOE security clearance.² Prior to his employment with the DOE contractor, the Individual submitted an Electronic Questionnaire for Investigations Processing form (eQIP) in April 2016 for a security clearance in connection with his then-employment with a Department of Defense (DOD) contractor. Transcript of Hearing (Tr.) at 15-16. The Individual reported in the eQIP that he had not used any illegal controlled substances in the prior seven (7) years. In February 2017, as part of the investigation process for the request for a DOE security clearance, an Office of Personnel Management (OPM) official interviewed the Individual. *See* Ex. C. During the interview, the

¹ The Regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

² Because the Individual, prior to working at the DOE facility, possessed a security clearance from another agency, he was given an interim DOE security clearance and began an abbreviated procedure to apply for a formal DOE security clearance. Tr. at 17.

Individual reported that he had used hallucinogenic mushrooms (mushrooms), an illegal controlled substance, in January 2016. Tr. at 18.

In December 2017, the local security office (LSO) sent the Individual a letter (Notification Letter) advising him that his security clearance was suspended and that the DOE possessed reliable derogatory information that created substantial doubt regarding his eligibility to retain an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guidelines H (Drug Involvement) and E (Personal Conduct), as well as the Bond Amendment, codified at 50 U.S.C. § 3343(b). The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA.

The Director of the OHA appointed me as the Administrative Judge in this matter. I convened the hearing pursuant to 10 C.F.R. § 710.25(d), (e) and (g), at which time I took testimony from the Individual. The LSO submitted three (3) exhibits, marked as DOE Exhibits A through C (hereinafter cited as "DOE Ex."). The Individual submitted two (2) exhibits, marked as Individual Exhibits A and B (hereinafter cited as "Individual Ex.>").

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO alleged, under Guideline H (Drug Involvement), that the Individual used mushrooms on one occasion in February 2016.³ DOE Ex. A at 3. Use of an illegal drug can 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. Guideline H at ¶ 24. Hallucinogens, such as mushrooms, are illegal drugs under the Guidelines. *Id.* at ¶ 24. The LSO further alleged that the Individual's use of an illegal drug prohibited him from possessing an access authorization pursuant to the Bond Amendment, codified at 50 U.S.C. § 3343(b). The Bond Amendment provides that agencies "may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict." 50 U.S.C. § 3343(b).

In the Notification Letter, the LSO also alleged under Guideline E (Personal Conduct) that the Individual failed to disclose his use of mushrooms in his eQIP. DOE Ex. A at 3. Refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination can raise questions about an individual's reliability and trustworthiness. Guideline E at ¶ 15.

The Individual's admission that he used mushrooms and his failure to report this use in the eQIP justify the LSO's invocation of Guidelines H and E in the Notification Letter. Further, the Individual's admission of using mushrooms supports the LSO's invocation of the Bond Amendment as a ground to suspend the Individual's security clearance.

³ The Notification Letter alleges that the Individual used mushrooms on one occasion in February of 2016, while the Individual testified at the hearing that he used mushrooms at a New Year's party during the night of December 31, 2015. Tr. at 18.

III. REGULATORY STANDARDS

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 regulations require me, 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). 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 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

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

IV. FINDINGS OF FACT AND ANALYSIS

The Individual does not dispute the facts as recorded in the Notification Letter. *See* Tr. at 19.⁴ In April 2016, the Individual, who was then employed by a DOD contractor, submitted the eQIP to obtain a DOD security clearance.⁵ Tr. at 16. In his eQIP, the Individual indicated that he had not illegally used any drugs or controlled substances in the prior seven (7) years. DOE Ex. B at 18. The Individual testified that he disclosed his use of mushrooms during a psychological examination in September 2016 in connection with his DOD employment.⁶ Tr. at 24-25. Subsequently, the individual was interviewed by an OPM official in February 2017. Tr. at 17-18. During this interview, the Individual admitted that he used mushrooms at a party in early 2016, prior to completing the eQIP. *Id.* at 18.

⁴ The Individual does challenge the assertion in the Notification Letter that his failure to report his use of mushrooms in the eQIP was a deliberate attempt to mislead DOE as to his illegal drug use. Tr. at 24.

⁵ This eQIP submitted for the Individual's DOD security clearance was later used by the DOE in its investigation of the Individual regarding his fitness to possess a DOE security clearance. Tr. at 17.

⁶ The Individual was required to undergo a psychological examination due to the nature of his duties with the DOD-contractor. Tr. at 25.

I have thoroughly considered the record of this proceeding, including the exhibits and the testimony of the Individual 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) and the Guidelines. The security concerns at issue center on the Individual's one-time use of mushrooms, and failure to disclose that use on the eQIP the Individual completed in April 2016. The Individual presented evidence to try to establish that he has not used illegal drugs other than on that occasion and that his failure to disclose his use of mushrooms on his April 2016 eQIP was an unintentional error. After due deliberation, I find that the Individual's DOE security clearance should be restored. Specifically, I find that restoring the Individual's security clearance would not endanger the common defense and security, and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The relevant evidence and my specific findings in support of this decision are discussed below.

A. Guideline H Security Concerns and the Bond Amendment

The Notification Letter asserted that the Individual raised security concerns under Guideline H as a result of his use of mushrooms in February 2016. *See supra* at n.3 (date of mushroom use). Further, the Notification Letter alleges that, based upon his use of mushrooms, the Bond Amendment prevents him from receiving a security clearance.

The Individual testified at the hearing that he attended a substance abuse recovery program offered by a religious institution for a period of approximately six (6) months. *Id.* at 20; *see also* Individual Ex. B. While the Individual did not believe that he had an addiction problem with mushrooms, he believed that he could apply the lessons of the program should he encounter other illegal drugs. Tr. at 23. The treatment program consists of various steps, and the Individual testified that he has completed all the steps.⁷ Tr. at 20. The program uses a structured format with a printed curriculum. Tr. at 21; Ind. Ex. B (program guide describing program's 12-step program based upon an adaption of the Alcoholics Anonymous 12-step program). While the program does not have any formal treatment evaluation, the Individual submitted a credential which allows him to visit certain church facilities. Individual Ex. A. The Individual testified that the Bishop of his church would be given informal reports on his progress in the treatment program, and that he would not have been given this credential without being deemed to be in good standing in the church. Tr. at 36-37.

In reviewing the evidence before me, I find nothing in the record indicating that the Individual has used illegal drugs, other than the instance cited in the Notification Letter, which was two (2) years prior to the hearing. I also find that the Individual has made changes to his environment evidencing his intent to abstain from the use of illegal drugs in the future. The Individual testified that he felt significant remorse for his one-time use of mushrooms and described significant changes in his personal beliefs since that time.

In May 2016, the Individual formally joined the church that sponsored the treatment program, and indicated that he had undertaken numerous lifestyle changes to support his abstinence from illegal drugs. At that time, he began to abide by religious tenets against consuming harmful substances

⁷ While the Individual testified that the program had 10 steps, the associated curriculum with the program describes a 12-step program. Individual Ex. B.

such as alcohol and tobacco. Tr. at 18–23, 32. The Individual testified credibly as to his intent to discontinue use of all substances that might negatively affect his health.

Guideline H mitigating factor ¶ 26(a) is applicable in this case. Paragraph 26(a) states that a concern may be mitigated when “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.” Adjudicatory Guidelines ¶ 26(a). In the present case, I am persuaded that the Individual is unlikely to use illegal drugs again in the future. In sum, I find that the Individual’s multi-year abstinence from illegal drugs, commitment to abstain from using illegal drugs in the future, and changes to his environment mitigate the Guideline H security concerns arising from his prior use of illegal drugs. *See, e.g., Personnel Security Hearing*, Case No. PSH-17-0017, at 4–5 (2017) (individual’s security clearance restored based on his ten-month abstinence from illegal drug use, commitment to abstain in the future, and disassociation from some, but not all, drug-using individuals)⁸; *see also Personnel Security Hearing*, Case No. PSH-16-0048, at 5–6 (2016) (security clearance restored where individual who used illegal drugs on a single occasion presented evidence indicating that he was unlikely to use illegal drugs in the future).

With regard to the Bond Amendment, as discussed above, I find that there is no evidence that the Individual is a current user of illegal drugs or is an addict. Consequently, I find that the Bond Amendment does not operate as a bar that prevents the Individual’s security clearance from being restored. *See Personnel Security Hearing*, Case No. PSH-16-0062 (2016).

B. Guideline E Security Concerns

The Guideline E security concerns arise from the Individual’s failure to disclose his illegal drug use in his eQIP. The Individual testified that in late 2015, he began to complete the eQIP form as a requirement to his employment at a DOD facility. Tr. at 27. Tr. at 27. Several times, his password to complete the form changed and he had to request replacement passwords. Tr. at 28. Additionally, in February 2016, prior to completing and sending the eQIP, the Individual was involved in an automobile accident which resulted in a concussion as well as four (4) fractures of his hip. Tr. at 30–31. The Individual testified that these issues may have contributed to his having unintentionally failed to disclose his mushroom use on the eQIP. Nonetheless, the Individual testified that he took full responsibility for not checking the eQIP to ensure that he had accurately answered all of the questions. Tr. at 27.

The Individual credibly testified that the omission was unintentional. The Individual also testified credibly that, in a psychological examination in September 2016, with regard to his DOD-contractor employment, which took place before the OPM interview, he revealed his one-time use of mushrooms. Tr. at 24-25. As discussed above, there is no evidence in the record that suggests that the Individual has used illegal drugs other than on that one occasion or that the Individual made other significant omissions during the security clearance suitability process. Further, I find it unlikely that he would have believed that he could deceive the LSO about his one-time

⁸ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

mushroom use by simply not reporting it on the eQIP, given his prior disclosure in the psychological examination. The evidence leads to the conclusion that the Individual's failure to report his one-time use of mushrooms was inadvertent. Consequently, I find that the Individual has mitigated the Guideline E security concerns.

While I do not specifically cite a Guideline E mitigating factor that is applicable in the present case, I have used the factors listed in 10 C.F.R. § 710.7(c) in making my findings with regard as to whether the Individual has mitigated the security concerns at issue. *See Personnel Security Hearing*, Case No. PSH-12-0060 at 6, fn. 3 (“There is no requirement that any particular number of factors or conditions be proved or that a majority of them point one way or the other. The relevance of each factor and condition depends on the facts. In this case, certain factors and conditions may demonstrate mitigation, but in other cases, other factors and conditions may do so. Adjudicatory review is not a mechanical point-counting device. Rather, the [Administrative Judge] looks at the totality of the circumstances to make a common-sense, reasoned judgment whether the individual has mitigated the allegations to resolve the security concern or concerns raised by the agency.”)

V. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines H and E, and the Bond Amendment. After considering all of 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. I therefore find that restoring the Individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the DOE should restore the Individual's access authorization.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals