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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:          March 1, 2018	)	Case No.:          PSH-18-0019
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Issued: June 1, 2018

**Administrative Judge Decision**

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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, 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.

**I. BACKGROUND**

The Individual began working for a DOE contractor in 2017 and held a security clearance until its suspension in November of that year. Tr. at 15. In March 2016, the Individual was arrested for Driving While Intoxicated (DWI). Ex. 7 at 9. In August 2017, the Individual sat for a personnel security interview (PSI) with the local security office (LSO) to update DOE on his DWI case’s progress. Ex. 7. During this PSI, the Individual disclosed that, in late June or early July 2017, he had received a traffic citation, with an accompanying fine of \$400, for driving with an invalid license.<sup>2</sup> Ex. 7 at 27, 44, 47. He then disclosed that, though his driver’s license had been suspended in early 2017, he had been driving to and from work two or three times per week. Ex. 7 at 49. The Individual had not disclosed the traffic citation as required. The Local Security Office (LSO) began

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<sup>1</sup> Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

<sup>2</sup> For convenience, I will deem the date of this citation as occurring in June 2017.

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 to continue holding 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 Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on March 5, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his wife, his brother-in-law, his former colleague, his current manager, and the counselor for his rational behavior training program. The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as "Ex."). The individual submitted no exhibits.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED 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 Guidelines E and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Under Guideline E, Personal Conduct, the LSO alleges that the Individual failed to timely report his June 2017 traffic citation, despite acknowledging that he had twice been advised of the reporting requirements. Ex. 1 at 1. The Guidelines provide that "[c]onduct 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." Adjudicative Guidelines at ¶ 15. Accordingly, the Individual's admissions adequately justify the LSO's invocation of Guideline E.

Under Guideline J, Criminal Conduct, the LSO alleges that the Individual has engaged in criminal activity based upon his 27 arrests and traffic citations spanning from 1998 to 2017. Ex. 1 at 1–2. The Guidelines provide that "[c]riminal 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." Adjudicative Guidelines at ¶ 30. One of the conditions set forth in the Guidelines that could raise a disqualifying security concern is, "a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the Individual's judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 31(A). The Individual's history of citations and arrests justifies the LSO's invocation of Guideline J.

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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 granting or restoring 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.

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

The Individual does not dispute the facts as recorded in the Notification Letter. See Hearing Transcript (Tr.) at 72. The Individual has an extensive history of traffic citations and arrests. A summary is provided below:

<u>Date</u>	<u>Citation or Arrest</u>
June 2017	Driving on Suspended License
March 2016	Driving While Intoxicated (DWI)
August 2015	Failure to Maintain Financial Responsibility Speeding
October 2014	Failure to wear Seatbelt Failure to Have a Valid Inspection Certificate
June 2010	Assault by Contact
April 2008	No Valid Inspection Certificate Failure to Possess a Valid Driver’s License Failure to Possess Liability Insurance
January 2008	Failure to Possess a Valid Driver’s License Failure to Possess Liability Insurance Speeding
December 2007	Assault by Contact on a Family Member
August 2007	Speeding Failure to Possess Liability Insurance Failure to Possess a Valid Driver’s License
August 2007	Speeding Failure to Possess Liability Insurance
August 2006	Speeding Failure to Possess Liability Insurance Failure to Possess a Valid Driver’s License

July 2006	Speeding
June 2006	DWI (reduced to Deadly Conduct)
December 2005	Parking in a Prohibited Zone
April 2005	Parking in a Prohibited Zone
September 2004	Speeding
	Failure to Possess Liability Insurance
	Failure to Possess a Valid Driver's License
May 2004	Interference with Duties of a Public Servant
	Disorderly Conduct (Abusive Language)
	Public Intoxication
	Possession of Drug Paraphernalia
June 2003	Failure to Wear a Safety Belt
	Failure to Possess Liability Insurance
May 2003	Speeding
	Failure to Wear a Safety Belt
August 2002	Speeding
	Failure to Possess Liability Insurance
	Failure to Possess a Valid Driver's License
May 2001	Minor in Possession of Alcohol
February 2001	Speeding Too Fast for Conditions
	Failure to Possess Liability Insurance
	Failure to Stop at a Red Light
	Failure to Have a Valid Registration
February 2000	Possession of Marijuana and Drug Paraphernalia
January 2000	Minor in Possession of Alcohol
May 1998	Forgery of a Financial Instrument
	Evading Arrest
	Criminal Trespass

*See* Ex. 1, Ex. 9 at 102-17.

As indicated above, the Individual was arrested for DWI in March 2016. Ex. 7 at 9. Because his DWI case was not resolved by the time he received his security clearance, he was required to submit to the PSI to keep the LSO apprised of the case's status. Ex. 7 at 9. In August 2017, the LSO conducted a PSI of the Individual. Ex. 7. During the interview, the Investigator asked if the Individual had experienced any other traffic stops or violations since March 2016. Ex. 7 at 23. The Individual responded that he had not. Ex. 7 at 23. Later, when the Investigator asked again, the Individual said he "just now remembered" that he had, within the last two months, received a ticket, with an accompanying fine of \$400.00, for driving with an invalid license. Ex. 7 at 27, 47.

The Investigator asked why he had not reported the incident. Ex. 7 at 45. The Individual stated that he believed that he did not need to report traffic violations under \$1,000.00. Ex. 7 at 45. The Investigator reminded him that, in a previous PSI, she had informed him that he needed to report traffic violations resulting in fines of \$300.00 or more. Ex. 7 at 45. The Individual stated that he also had a security orientation in January 2017 that covered reporting requirements. Ex. 7 at 46. He stated that he had not asked anyone for clarification on the reporting requirements after receiving the June 2017 traffic citation. Ex. 7 at 47.

With regard to the June 2017 citation, the Individual told the Investigator that he was stopped for speeding on his way to work. Ex. 7 at 42. The officer informed the Individual that his driver's license was invalid. Ex. 7 at 42. However, because the Individual showed the officer that he had paid all the fees to get an occupational driver's license, the officer only cited him for driving with a suspended license, giving him just a warning for speeding. Ex. 7 at 42. The Individual told the Investigator that he was informed in March 2016 that his driver's license would be suspended and that he would need an occupational license to drive. Ex. 7 at 31. After his license was suspended in April 2017, the Individual began looking into the process of getting an occupational license. Ex. 7 at 33. Meanwhile, he continued driving to and from work two to three times per week. Ex. 7 at 49. As of the August 2017 PSI, the Individual had not yet had his occupational license hearing.

The Investigator asked the Individual why he continued driving when he knew that he did not have a valid license. Ex. 7 at 36. The Individual responded that he has been very cautious and that he had only gotten pulled over once. Ex. 7 at 36. The Investigator reminded him that driving without a valid license showed disregard of the law. Ex. 7 at 36. The Individual responded that he had to drive to get to work and was doing his best to get his occupational license. Ex. 7 at 36. When the Investigator asked what he would do if he did not receive an occupational license, the Individual simply stated. "I should get it," and "I'm hoping for the best." Ex. 7 at 38.

The Individual was represented by counsel at the hearing in this matter. The majority of the testimony focused on the Individual's failure to report his June 2017 traffic citation and the various programs that the Individual had attended. The Individual's wife testified that the Individual had been attending rational behavior training and was learning how to make positive decisions and to "face the problem head-on, versus just maybe hoping it works itself out." Tr. at 15-16. She testified that he had also recently completed an intensive outpatient program for alcohol use. Tr. at 17. She further testified that family is central to the Individual's life and that he wants to continue working for the DOE contractor so he can support them. Tr. at 21. Finally, she testified that the Individual will report traffic tickets of any amount now, and that he has committed to asking questions and getting help when he does not know what to do. Tr. at 21.

The Individual's current supervisor testified that the Individual is a hard worker, a humble man, and very trustworthy. Tr. at 34. She testified that he has matured in his months working for her, and that she believes he would have reported his most recent traffic ticket if she had been his supervisor at the time. Tr. at 36. When asked if she knew what DOE's concerns were, she said the "speeding tickets" and the Individual's failure to timely report his most recent one. Tr. at 41. She did not give any testimony indicating that she was aware that the Individual had been driving with an invalid license.

The Individual's brother-in-law testified to his character, describing the Individual as a conscientious family man. Tr. at 52-54. He testified that the Individual has declined to spend time with friends who go out drinking because he does not want that behavior to affect his job. Tr. at 48-49. He further testified that the Individual has taken classes and gone to counseling because he knows that he needs to do so in order to keep his job. Tr. at 50-51. He also testified that the Individual "follows the rules tremendously, especially ... if it comes to his job, that's his livelihood," and that the Individual does not want to jeopardize his employment. Tr. at 54. He testified that he believes the Individual would seek guidance on reporting requirements in the

future, but he did not give any testimony indicating that he was aware that the Individual had been driving with an invalid license.

The Individual's former colleague testified that the Individual was a trustworthy and capable employee. Tr. at 61–63. He testified that he never had any concerns about the Individual's handling of confidential information at that job. Tr. at 61. He testified that the Individual had great judgment as it pertained to the workplace. Tr. at 65. When asked if he knew what DOE's concerns were, he said that the Individual was not very specific with the details and that he had the impression that it had something to do with tickets and questions about the Individual's integrity. Tr. at 66–68. He did not give any testimony indicating that he was aware that the Individual had been driving with an invalid license.

The Individual testified on his own behalf. He testified that he wants to show that he is a man of integrity, no matter the result of the hearing. Tr. at 71. He testified that, at the time of the hearing, he had an occupational driver's license. Tr. at 73. The Individual testified that he has learned the importance of taking care of issues in his life and that he will report any infractions in the future, no matter how minor. Tr. at 76. He stated that, having taken rational behavior training, he will now weigh the consequences of decisions before making them, asking himself, "Is this going to be worth it?" Tr. at 79. He also testified that he has not hidden his past from the people in his life and is not subject to blackmail about his transgressions. Tr. at 82. He testified that he would never jeopardize the trust placed in security clearance holders. Tr. at 82. The Individual testified that he had abstained from alcohol since the beginning of 2018. Tr. at 104. He had also been in counselling for his poor decision-making, including about five sessions with his rational behavior training counselor. Tr. at 88, 109. When asked if he knew what DOE's concerns were, he said, "I didn't turn in a ticket in a timely manner and just poor decision-making." Tr. at 94. He stated that he intends to follow all rules, laws, and regulations.

When questioned directly about his driving without a valid license, the Individual listed several reasons why he had done so. Tr. at 110. He also stated that he had not been pulled over since his June 2017 ticket. He did not, however, give any indication that he had stopped driving with an invalid license following his PSI.

The Individual's rational behavior training counselor testified that the Individual is very motivated to make better decisions going forward. Tr. at 128–29. He stated his belief that the Individual has a good prognosis and that he was maturing quite a bit as a result of the administrative review process. Tr. at 133. He described the current matter as relating to the Individual's failure to timely report his ticket. Tr. at 126.

## **V. ANALYSIS**

The issue before me is whether the Individual, as he stands at the time of his hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner.

Guideline E provides that the following conditions (in relevant part) may mitigate Personal Conduct security concerns: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) the offense is so

minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and (4) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 17(a), (c), (d), (g).

Mitigating factors for Guideline J include the passage of so much time since the criminal activity that further criminal behavior is unlikely, and evidence of successful rehabilitation. Adjudicative Guidelines at ¶ 32(a), (d). Because of the strong presumption against restoring security clearances, I must deny restoration unless I am convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

#### **A. Guideline E**

The Individual testified that he will now report any infraction he makes, however small. His witnesses all supported that testimony with their own. However, it is troubling that at his first chance to divulge his June 2017 citation, the Individual denied any encounters with law enforcement. At the time of the PSI, the encounter was recent and the Individual was still making payments on the fine. It is difficult to believe, with all of the detail that the Individual subsequently provided, that the incident simply slipped his mind. Whether the Individual actively sought to deceive the Investigator, or whether he simply had a gut reaction to conceal his traffic citation, his honesty is called into question as much for that active misdirection as for his failure to timely report the incident to his supervisor. The Individual's witnesses spoke of his honesty and trustworthiness going back years, but his lack of candor with the Investigator tells a different story.

Since receiving the Notification Letter, the Individual has received counseling for his poor decision-making and accepted responsibility for his actions. Adjudicative Guidelines at ¶ 17(d). However, five sessions seems too short to reverse 20 years of poor decision-making. He has eschewed old friends with bad habits, but those habits do not appear to have been relevant to the Individual's honesty, candor, or driving practices. Adjudicative Guidelines at ¶ 17(g). Furthermore, I cannot find that the Individual made a good-faith effort to come forward about his traffic violation when first asked. Adjudicative Guidelines at ¶ 17(a). Finally, the behavior the Individual concealed was habitual, both in terms of his citations over the years and his admission that he drove without a valid license multiple times per week for several months. Given the relatively short period of time the Individual has demonstrated reformed behavior, I cannot find that the Guideline E security concerns raised by the Individual's failure to report his 2017 traffic citation (Driving on a Suspended License) have been totally resolved.

#### **B. Guideline J**

The Individual presented little testimony at his hearing about his knowingly and habitually driving without a valid driver's license. He submitted no exhibits. He was offered a chance to renounce his behavior and testify that he had stopped it immediately. Significantly, he did not do so. Instead,

the Individual listed the reasons he had driven illegally; lamented the fact that he had put himself in a position where he had to do so; and focused on the fact that he had not been pulled over since the incident. In making these statements, the Individual displayed the weighing of consequences he was taught to do in his decision-making classes. Notwithstanding, the Individual's recent calculated decision to deliberately drive without a license is very concerning.

The Individual's traffic offense/criminal behavior is part of a pattern going back approximately 20 years, with the most recent incident occurring just last year.<sup>3</sup> Adjudicative Guidelines at ¶ 32(a). While the Individual has sought counseling to help him make better decisions, as discussed above, the relatively short duration of such counseling is not sufficient to convince me that his pattern of inattention to legal requirements and laws is no longer a security concern. Adjudicative Guidelines at ¶ 32(d). Further, the Individual has often gone several months to a year between his traffic citations. Ex. 1 at 3. Thus, the fact that the Individual has gone one year without being cited is insufficient to show rehabilitation. While the Individual has made some significant efforts to reform his behavior and to increase his focus and attention to problems, I cannot find that the Guideline J concerns have been totally resolved.

## VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines E and J of the Part 710 regulations. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring the Individual's DOE 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). Accordingly, I find that the DOE should not restore access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

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

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<sup>3</sup> The Individual provided testimony that a number of these arrests/citations were ultimately dismissed. Tr. at 107-111. A number of the citations for Failure to Possess Liability Insurance and Failure to Possess a Valid Driver's License were dismissed when the Individual presented evidence to a Court that he, in fact, had liability insurance and a driver's license. Tr. at 112. However, in the Individual's state of residence it is required to carry proof of insurance and a driver's license. The Individual, despite receiving citations, failed to comply with this legal requirement on numerous occasions, providing further evidence of a pattern of criminal behavior.



