

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: December 9, 2020)	Case No.: PSH-21-0006
)	
<hr style="border: 0.5px solid black;"/>		

Issued: April 6, 2021

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed 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) (Adjudicative Guidelines), I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In January 2020, the Individual reported to the local security office (LSO) that, beginning in September 2019, he had been receiving ongoing threats of extortion and blackmail from a married couple. Ex. 4 at 4. He told the police that, under threat, he had made several payments totaling approximately \$18,000. *Id.* The LSO subsequently issued a Letter of Interrogatory (LOI) to the Individual seeking greater detail, and the Individual responded in writing. Ex. 12.

In a letter dated November 19, 2020 (Notification Letter) the LSO informed the Individual that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), 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.

LSO explained that the derogatory information raised security concerns under Guideline E of the Adjudicative Guidelines. Ex. 4.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 5. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of two witnesses and testified on his own behalf. *See* Transcript of Hearing (Tr.). The LSO submitted thirteen exhibits, marked Exhibits 1 through 13. The Individual submitted eight exhibits, marked Exhibits A through H.²

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. The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the basis for suspending the Individual's security clearance. Ex. 4. Conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Adjudicative Guidelines at ¶ 15. Concerning conduct includes any personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. *Id.* at ¶ 16(e). The Notification Letter contained, in part, the following information: in September 2019, the Individual began receiving blackmail and extortion threats from two people with whom he had engaged in text message conversations; the extortioners demanded ongoing payments from the Individual in order to conceal text messages and photos from being made public; the Individual was led to believe that, in exchange for his payments, the extortioners would provide him with the electronic devices and printed media that contained the compromising information; and the Individual did not acknowledge that, despite having paid \$18,000 to prevent the release of information he viewed as sensitive, he has already been "compromised." Ex. 4 at 4-6. The above information justifies the LSO's invocation of Guideline E.

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) (strong presumption against the issuance of a security clearance).

² Exhibit A is a letter dated February 16, 2021, from a charitable organization. It replaces a preceding, undated letter from the same organization.

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 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). 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

In January 2020, the Individual reported to the local security office (LSO) that he was being blackmailed and had received extortion threats, primarily from a married couple. Ex. 4 at 4. In his response to the LOI, the Individual stated that, in July and August 2018, he began communicating with Spouse A of the married couple through text messages and personal meetings, and he admitted that some of their communication were of a sexual nature.³ See Ex. 12 at 7. The Individual further explained that, in March 2019, Spouse B contacted the Individual to find out the nature of the Individual’s relationship with Spouse A. *Id.* The Individual admitted that he also engaged in communication with Spouse B that contained sexual overtones. *Id.* Months later, in September 2019, the Individual began receiving text messages from Spouse A demanding money and threatening to release text messages and photographs to the Individual’s family, friends, co-workers, and associates. *Id.*

Additionally, the Individual reported that Spouse B led him to believe that she was also being blackmailed by Spouse A, in that Spouse A had somehow combined text messages between the Individual and Spouse B with photographs of Spouse B to create a file that made it appear that the Individual and Spouse B were having an extramarital affair. *Id.* at 7–8. The Individual also alleged that in October 2019, Spouse B claimed that Spouse B’s father had hired an attorney to develop an agreement, the terms of which required Spouse A to relinquish all mobile phones, tablets, and hard copy documents used for blackmail in exchange for a payment of \$5,000. *Id.* at 7. The Individual never saw or signed the agreement. *Id.* The record indicates the Individual paid his extorters a total of about \$18,000 over 96 separate transaction. Ex. 13.

The record includes a clearance criteria statement (Statement) signed by the Individual in October 2018. Ex. 10 at 26. Subparagraph L of the Statement recites that the signer recognizes that conduct that could raise a doubt as to eligibility for access authorization includes “[engaging] in any unusual conduct . . . which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress[.]” *Id.*

At the hearing, the Individual asserted that he did not believe that his conduct could affect his security clearance eligibility because he kept his work life separate from his personal life. Tr. at 76. He testified that he believed that his personal conduct had no relevance to his employment

³ The Individual confirmed the nature of the text messages during his testimony. Tr. at 70.

because he had separately compartmentalized these two aspects of his life. *Id.* at 49–50. He testified that he eventually began to realize that he should report the situation to the LSO when he decided to file a police report. *Id.* at 50. He stated, “[A]t that point is where I started thinking, ‘Oh, now I got to start the process of reporting this information to DOE.’ Because, you know, they do get involved in things when -- when there are bankruptcies and other types of situations.” *Id.* at 50.

The Individual indicated that during the time that he was being extorted, he did not believe he was compromised because he always thought that “someone would be compromised if they were approached by foreign agents.” *Id.* at 78. He also stated that the questions in the LOI to which he responded did not ask him if he thought that he was compromised. *Id.* at 55, 77. However, he testified that he now understands that he could have been compromised. *Id.* at 77.

Under questioning by DOE Counsel, the Individual confirmed that he received annual security training from his employer. *Id.* at 61. He testified that he was not aware whether the security trainings ever discussed how personal conduct could affect professional life. *Id.* However, he knew that the five-year security clearance renewal process required completing a questionnaire that included questions about “personal things.” *Id.* The Individual recalled the Questionnaire for National Security Positions (QNSP) he completed in October 2018, and he confirmed that he read and signed the accompanying Statement as part of the process. *Id.* at 80.

The Individual also testified regarding the circumstances at the time he self-reported the extortion. The Individual testified that he told his manager about his involvement in the scheme before he contacted the police. *Id.* at 75. He explained that he self-reported the information mainly because the extortioners threatened to come to his work address. *Id.* He stated that he notified his manager in case they came to his workplace and created a problem. *Id.* at 75–76.

Lastly, the Individual provided examples of the efforts he took to address this situation. He testified that he self-reported the blackmailing and extortion scheme to his employer and the LSO before its discovery. *Id.* at 54. He then assisted the police in their investigation and served as a prosecutorial witness which led to Spouse B’s criminal conviction. *Id.* at 52; Ex. 13 at 3.⁴ He also stated that he has not had any contact with the extortioners since approximately July 2020. *Id.* at 65.

In addition to the Individual’s testimony, the record includes character statements from the project manager and the corporate secretary of the nonprofit organization where the Individual volunteers. The project manager stated that the Individual assists in providing vision services for his community, and that the Individual is honest and trustworthy. Ex. A at 1–2. The corporate secretary agreed that the Individual is honest, and he described the Individual’s financial responsibilities as treasurer and a member of the Board of Directors. Ex. C.

The record also includes a letter of reference submitted by the Individual’s supervisor. Ex. B. The supervisor stated that the Individual is very talented and diligent. *Id.* The supervisor also stated that he has never had a reason to question the Individual’s credibility. *Id.*

⁴ The record includes copies of a police affidavit and arrest warrant for Spouse B and a judgment of conviction against Spouse B. Ex. E; Ex. F.

In addition to the letters, two of the Individual’s coworkers testified on his behalf. The first coworker has known the Individual for over twenty years and regularly interacted with him at work. Tr. at 27–29. He asserted that the Individual has a very good reputation for honesty, and that the Individual follows all protocols and procedures regarding the protection of information at their work facility. *Id.* at 29-30. The second coworker testified that he has been working full-time with the Individual for approximately nine years. *Id.* at 37–38. He asserted that the Individual is honest and highly respected throughout the DOE complex for his strict compliance with the security program. *Id.* at 39, 41, 43–44.

V. ANALYSIS

A. Guideline E Considerations

The Individual argued, through counsel, that the following Guideline E mitigating factors apply to mitigate the security concerns in this case:⁵

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
...
- (c) 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;
- (d) 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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
...
- (g) 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.

⁵ The Individual’s attorney also argued that “if the Court finds that perhaps he didn’t meet the adjudicative standards, we believe that under Waiver W in Appendix C the benefit or initial eligibility outweighs the security concerns because it wasn’t related to work [.]” Tr. at 96. Under Part 710, “[a]pproval authorities may approve a waiver only when the benefit of initial or continued eligibility clearly outweighs any security concerns.” Annex C to Appendix A to 10 C.F.R. 710 at Waiver (W). I leave it to those authorities to make such a determination. As stated earlier, the purpose of this hearing is to determine whether the continuation of the Individual’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 Individual first argued that he mitigated the security concern based on the factors in ¶ 17(a) above. He asserted that by self-reporting his conduct to the LSO, he made prompt, good-faith efforts to correct the concealment before he was confronted with the facts. I disagree. While I credit the Individual for self-reporting his conduct, he did not report it to the LSO until January 2020, four months after he received the initial blackmail threats in September 2019. Moreover, by the time he had reported the blackmail to the police, he had already submitted to the threats and made several payments to the extortioners totaling approximately \$18,000 in an effort to conceal personal information. I therefore find that his self-report to the LSO was not sufficiently prompt to provide mitigation under Guideline E at ¶ 17(a).

Next, the Individual argued that, under ¶ 17(c), his behavior happened under such unique circumstances that it is unlikely to recur because it happened only once in his career. The fact that the Individual has only been implicated in one extortion scheme does not thereby mitigate my concern. Furthermore, while I agree that the evidence shows that the Individual has established a reputation for trustworthiness in his work performance, it is his personal conduct that forms the foundation of the security concerns. The evidence of his professional integrity does not outweigh the serious concern resulting from the extortion in his personal life. He capitulated over ninety times before finally deciding to report the issue to the authorities. I do not find the circumstances sufficiently unique to resolve the concerns.

Furthermore, I do not find the Individual's testimony regarding his motivation to disclose his conduct to the LSO credible. I do not believe that he only realized his personal conduct would be of interest to the LSO at the time he decided to file a police report. The Individual acknowledged answering personal conduct-related security questions in the QNSP, which clearly indicates that he knew his conduct outside of work could be relevant to security clearance eligibility. Furthermore, the Individual read and signed the Statement attached to his QNSP, which explicitly addressed the Individual's situation: being exploited for engaging in unusual conduct that made him vulnerable. Finally, his admission that he knew the LSO should be informed of issues such as bankruptcies removes any doubt that he knew that his conduct outside of work could implicate security concerns. Accordingly, I also find unconvincing his explanation that he compartmentalized his personal and professional life. I consequently cannot conclude that the conduct at issue is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment. For the reasons stated above, I conclude he has not resolved the concern under ¶ 17(c).

Turning to the mitigating conditions under ¶ 17(d), at the hearing, the Individual acknowledged his behavior by testifying that he now recognizes how his personal conduct could have been a security concern. However, this acknowledgment and his testimony regarding his subsequent actions are insufficient to resolve my concern. The Individual has not participated in or completed a counseling program. As for whether he took other sufficient positive steps to alleviate the circumstances that contributed to untrustworthy or other inappropriate behavior, I credit the Individual's eventual self-report and his subsequent assistance to the police in their investigation and prosecution. However, the impact of his actions is undermined for the reasons discussed in the previous paragraph and the fact that, by his own admission, his self-report was precipitated by the extorters' threat to come to his job site. I therefore find that the Individual has not met his burden

to mitigate the concerns under ¶ 17 (d). I further find, based on the same reasoning, that he has not resolved the security concerns under ¶ 17(e).

Lastly, the Individual cited his lack of contact with Spouse A and Spouse B and their associates as mitigation under ¶ 17(g). However, his association with persons involved in criminal conduct was not presented as a basis for concern. Accordingly, I find that ¶ 17(g) is not applicable in this case.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E of the Adjudicative Guidelines. 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored.

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

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals