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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: April 29, 2021) Case No.: PSH-21-0043
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Issued: July 26, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ 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 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 access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In early 2016, the Individual was the subject of an Administrative Review (AR) Hearing due to security concerns related to her ability to ability to protect national security and her personal conduct. *See In the Matter of: Personnel Security Hearing*, OHA Case No. PSH-16-0002 (2016). Specifically, the Local Security Office (LSO) was concerned that the Individual: (1) failed to properly secure a vault-type room (VTR) on two occasions, (2) brought a personal cell phone into the VTR on two occasions, and (3) deliberately carried a personal electronic device (PED) into a vault-type room (VTR) for personal convenience and due to “workplace frustrations,” despite knowing that this behavior was prohibited. *Id.* The LSO was additionally concerned about the Individual’s failure to report these violations despite knowing the reporting requirements. *Id.* After an AR hearing, the Administrative Judge ultimately determined that her security clearance should be restored. *Id.*

¹ 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.

From September 2015 to May 2019, the Individual engaged in 11 new security violations.² Ex. 1. In February 2020, the LSO asked her to complete a Letter of Interrogatory (LOI) regarding these incidents.³ Ex. 7. Due to unresolved security concerns, the LSO once again informed the Individual, in a Notification Letter dated June 26, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline K (Handling Protected Information). Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted nine numbered exhibits (Exhibits 1–9) into the record. The Individual tendered 3 exhibits (Exhibits A-C) and presented three witnesses, including herself, to testify on her behalf. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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), 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 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.

² Although the Individual reported two of these new incidences during the 2016 AR Hearing, they were not cited as security concerns in the Summary of Security Concerns at issue in that hearing. *See* PSH-16-0002; Tr. at 167.

³ The Individual disputes the use of the word “incident,” arguing that her conduct was not found to be a “security incident” pursuant to the Safeguards and Security Program, DOE O 470.4B. Ex. 7; *see* Tr. 106. As used in this Decision, the term “incident” solely references its common meaning - an occurrence.

III. Notification Letter and Associated Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual's eligibility for access authorization. The information in the letter specifically cited Guideline E and Guideline K of the Adjudicative Guidelines. Guideline E concerns "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations." Guideline E at ¶ 15. This conduct can call into question an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* Guideline K concerns the "deliberate or negligent failure to comply with rules and regulations for handling protected information." Guideline K at ¶ 33. This conduct raises doubt regarding an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard protected information. *Id.*

In citing Guidelines E and K, the LSO relied upon 11 separate security violations, listed below, in which the Individual:

- (1) Failed to properly secure a VTR prior to leaving (May 2019)
- (2) Brought a PED into the VTR (March 2019)
- (3) Brought a PED into the VTR with the Bluetooth and WiFi enabled (February 2019)
- (4) Brought a PED into the VTR with the Bluetooth and Wifi enabled (January 2018)
- (5) Escorted three employees into the VTR without providing the requisite briefing, resulting in the discovery of a PED in the VTR (August 2017)
- (6) Failed to disable the Bluetooth and WiFi on her PED upon entering a Limited Area (December 2016)
- (7) Brought a PED into the VTR (October 2016)
- (8) Brought a PED into the VTR (June 2016)
- (9) Allowed an uncleared employee to enter the VTR and failed to provide the requisite briefing, resulting in the discovery of a PED in the VTR (May 2016)
- (10) Brought a PED into the VTR upon being escorted into the VTR (October 2015)
- (11) Brought a PED into the VTR (September 2015). Ex. 1.

The LSO additionally relied upon the Individual's acknowledgement that she receives annual security briefings and is aware of the policies regarding prohibited PEDs. *Id.* Lastly, it cited the Individual's reassurances in the 2016 AR Hearing, that "there would be no possibility of any future work-related security violations." *Id.*

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below. At the hearing, the Individual presented the testimony of two witnesses and testified on her own behalf. During the hearing, the Individual acknowledged and explained each of the 11 cited security violations and noted that she reported each of the events to the relevant security department. Tr. at 101-135. She testified that she did not believe these 11 events indicated a pattern of concerning conduct or nonadherence to rules as each of these events were unintentional and the result of varying conditions, each with their own mitigating circumstances. *See id.* at 138, 177. She described the events as “one-offs” and noted that “given the sheer number of times [she] would enter the VTR and remember not to bring” a PED with her, the events felt like “aberrations.” *Id.* at 138, 160. The Individual stated that each time she committed a security violation, she was “really upset” and “hated” herself; she also discussed each violation with her manager. *Id.* at 130, 144, 147. She noted that she “tried to work with [her] managers and work with [her] teammates to figure out how to fix it [,] but it wasn’t quite enough.” *Id.* at 147. She additionally explained that no one informed her “previous to May 2020,” that her security violations were concerning or indicated a pattern of conduct. *Id.* at 144-145. She noted that “security” has still not brought her attention to the matter. *Id.* at 145.

The Individual’s previous supervisor (Supervisor) testified on her behalf and stated that she felt that the Individual is “very cautious and aware” with respect to safeguarding national security. *Id.* at 12, 19. She indicated that she knew of many of the Individual’s security violations and never felt that the Individual engaged in any deliberately compromising action. *Id.* at 17, 19. The Supervisor noted that the Individual was always “contrite” and “upset” each time that she committed a security violation, engaged in problem solving to avoid committing future security violations, was actively involved in helping others to avoid committing violations, and demonstrated strong reporting habits. *Id.* at 15, 17-18, 29, 34. The Supervisor testified that she had discussions with the Individual about wearing a rubber band around her badge as a reminder to make sure she didn’t have a PED in a prohibited area, but “[t]hen it went off.” *Id.* at 30. She noted that she also “talked about leaving the cell phone in the car,” and after additional violations, she eventually had to require the Individual to leave her cell phone in the car. *Id.* at 30, 33; *see id.* at 143. The Supervisor stated that although the Individual demonstrated a “sincere effort” to avoid engaging in security violations, she was not always successful. *Id.* at 35.

The Individual testified that, following the January 2018 incident, the Supervisor “mention[ed]” that she chose to leave her cell phone in her car; however, the Individual decided not to implement the practice at the time. *Id.* at 142. Instead, the Individual said she began wearing a rubber band around her badge to help remind her to remove her cell phone from her person prior to entering the VTR. *Id.* at 133-134. However, by the February 2019 event, she was not wearing the rubber band because she was having “some issues” with it. *Id.* at 134. She described how it would “catch on things and fling off” and she would have to find it or obtain a new one. *Id.* The Individual explained that when the March 2019 incident occurred, “it was clear that [she] had to take additional action,” and she began wearing the rubber band consistently. *Id.* at 135, 143. Then, in May 2020, when her security clearance was suspended, the Supervisor ordered her to leave her cell phone in her car, which she has been doing since.⁴ *Id.* at 128, 143. She admitted that she “could have taken stronger

⁴ The Individual asserts that even though the Supervisor required her to keep her cell phone in her car, she chose to do it on her own. Tr. at 161. She noted that prior to her making this decision, the idea was “not strongly presented to [her] as something to seriously consider.” *Id.*

actions towards...the cell phone,” but assured that it now remains in her car, a practice she will continue “forever.” *Id.* at 177.

The Individual testified that she believes the intention behind the violation “matters a lot,” as does the result of the violation. *Id.* at 152. She asserted that she did not intentionally violate security procedures, she promptly reported any violations, “and there was never any risk of compromise.” *Id.* at 153. She made assurances that she will “do [her] best to implement the plan” she currently has in place and implement any other suggestions that are made.⁵ *Id.* at 165.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony 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 Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns, as noted by the LSO, regarding Guideline E and Guideline K. I cannot find that restoring the Individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

Given that the Guideline E and Guideline K security concerns arise from the same conduct, I will analyze them together. As discussed above, the deliberate or negligent failure to comply with rules and regulations for handling protected information raises doubt about an individual’s willingness or ability to safeguard such information or about that individual’s judgment, reliability, or trustworthiness. Guideline K at ¶ 33. Any failure to comply with rules for the protection of classified or sensitive information or negligent or lax security practices that persist despite counseling from management can raise security concerns that could disqualify an individual from holding a security clearance. *Id.* at ¶ 34 (g-h). Similarly, an unwillingness to comply with rules or regulation, or an individual’s display of other characteristics indicating that the individual may not properly safeguard classified or sensitive information, may disqualify an individual from holding a security clearance. Guideline E at ¶ 16 (d).

In an attempt to mitigate the security concerns raised by the LSO, the Individual asserts that the violations were inadvertent, were promptly reported, did not result in a compromise of information, and do not suggest a pattern of conduct. *See* Guideline K at ¶ 35(d) (stating that Guideline K security concerns may be mitigated if the “violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern” of conduct”). She further argues that each violation occurred under a unique set of circumstance, and her revised security practices, along with a newly constructed VTR environment, make recurrence unlikely. *See id.* at ¶ 35(a); *see* Guideline E at ¶ 17(c) (stating that security concerns may be mitigated if the if the

⁵ The Individual additionally asserted that she never made any assurances in the 2016 AR Hearing that “there would be no possibility of any future work-related security violations.” Tr. at 100. Rather, she explained that she assured the Administrative Judge that she would not deliberately engage in any violations and that she would immediately report any inadvertent violations. *Id.* at 101-101.

behavior happened so infrequently or under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment).

The record in this case makes clear that the Individual promptly reported all violations and does not demonstrate evidence of compromise or deliberate behavior. However, despite being aware of her concerning history of security violations following the 2016 AR Hearing, she did not commit to any consistent or significant practices that would aid her in preventing inadvertent security violations. In fact, the 2016 Decision was issued in May, and before the close of the year, the Individual committed four additional security violations. It was not until January 2018, after she committed two additional security violations, that she began to use the rubber band reminder, which she did not wear consistently until two additional violations occurred. Despite receiving the idea of leaving her cellphone in her car in January 2018, the Individual did not decide to take this action until her security clearance was once again revoked in May 2020.

Following the 2016 AR Hearing, the Individual continued to act in a manner that put national security at risk and failed to take permanent action until her security clearance was revoked for the second time. Her refusal to act, while still committing security violations, regardless of her intent, demonstrates a concerning pattern of conduct. *See* Guideline K at ¶ 35 (d). Furthermore, her reappearance in a second AR Hearing for the same conduct, and her inability to recognize on her own that the continual violations were not a significant cause for concern, do not instill confidence that this behavior is unlikely to recur. *Contra* Guideline K at ¶ 35(a); Guideline E at ¶ 17(c). As such, I cannot find that the Individual has mitigated the DOE's security concerns under Guideline E and Guideline K.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline E and Guideline K. 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 regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals