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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: May 21, 2021) Case No.: PSH-21-0065
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Issued: August 13, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (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, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

I. BACKGROUND

The Individual has an extensive history of significant criminal activity during the period beginning in January 2008 and continuing through September 2017.² On January 22, 2008, police arrested the Individual and charged her with Battery (Household Member). Ex. 6 at 1; Ex. 7 at 34; Ex. 8 at 80, 121. On March 31, 2008, and on April 16, 2008, police charged the Individual with Failure to Appear in in Court. Ex. 6 at 1. On October 10, 2008, Federal law enforcement officials arrested and charged the Individual with Conspiracy to Import a Controlled Substance, Importation of a Controlled Substance; Conspiracy to Possess a Controlled Substance with Intent to Distribute; and

¹ 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.

² The LSO obtained this information when the Individual, an applicant for a DOE Security Clearance, underwent a background investigation. This investigation began after the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) to the Local Security Office (LSO) on April 10, 2019. Ex. 7 at 1. The United States Office of Personnel Management’s (OPM) Investigation Service subsequently investigated the Individual and issued a report of its findings on October 31, 2019. Ex. 8. On February 3, 2020, the Individual signed and submitted her responses to a Letter of Interrogatory (LOI) issued to her by the LSO on January 24, 2020. Ex. 6 at 33.

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Possession with Intent to Distribute a Controlled Substance. Ex. 6 at 2; Ex. 7 at 35; Ex. 8 at 81, 116. On November 12, 2008, police arrested and charged the Individual with Unlawful Carrying of a Deadly Weapon, and Offenses by Minors. Ex. 6 at 2; Ex. 7 at 36; Ex. 8 at 102. On December 06, 2008, police arrested and charged her with Under 21 Unlawful Possession of Alcohol. Ex. 6 at 3; Ex. 7 at 37; Ex. 8 at 84, 103. On September 06, 2009, police arrested and charged her with Driving Under the Influence of Alcohol (.08), first offense, and Careless Driving. Ex. 6 at 4; Ex. 7 at 38; Ex. 8 at 84-85, 103-104. On March 09, 2010, police arrested and charged her with Shoplifting (\$250 or less) and Assault. Ex. 6 at 4; Ex. 7 at 39; Ex. 8 at 83, 104-105. On November 19, 2010, police arrested and charged her with Burglary (commercial), 4th degree Felony, and Burglary (commercial) Conspiracy, 4th degree Felony. Ex. 6 at 6; Ex. 7 at 43; Ex. 8 at 107-109. On November 28, 2010, police arrested and charged her with Possession of a Controlled Substance, 4th degree Felony, Attempted Tampering with Evidence, Felony, two counts of Contributing to the Delinquency of a Minor; and Shoplifting \$250 or less. Ex. 6 at 6-7; Ex.7 at 41; Ex. 8 at 84, 106-107, 110. On December 01, 2010, police charged her with Failure to Comply with Specific Requirements. Ex. 6 at 8. On August 29, 2011, police arrested and charged her with Battery on a Peace Officer. Ex. 7 at 44; Ex. 8 at 83. On June 08, 2016, the Individual's former romantic partner filed for and received an Order of Protection against her, after the court found that the Individual committed an act of domestic abuse. Ex. 7 at 45; Ex. 8 at 83, 125. On June 24, 2016, while detained by Border Police at the U.S. and Mexico border, she spit on Border Patrol agents and made death threats towards them. Ex. 8 at 87. On September 13, 2017, police cited the Individual for No Proof of Insurance and Speeding (1-10 mph over). Ex. 7 at 33. On September 16, 2017, police arrested and charged the Individual with Shoplifting, \$250-\$500. Ex. 8 at 84, 109, 120.

On May 26, 2011, the Individual was convicted of Tampering with Evidence and two counts of Shoplifting \$250 or less and was incarcerated for 12 months. Ex. 6 at 7; Ex. 7 at 41; Ex. 8 at 110-113.

The LSO requested that the Individual undergo a psychological/substance abuse evaluation conducted by a DOE-contracted Psychologist (the Psychologist) who interviewed the Individual on March 3, 2020. Ex. 9 at 1. On March 15, 2020, the Psychologist issued a report in which she opined: "Given her life at this time, and mostly over the past 10 years, it is my opinion that [the Individual] has taken steps and made decisions which make it highly unlikely that she would engage in criminal activities in the future."³ Ex. 9 at 8.

On June 23, 2020, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from eight witnesses: The Individual, her mother, her father, her stepmother, her fiancé, her union representative, her financial advisor, and her former teacher. *See* Transcript of Hearing, Case No. PSH-21-005 (hereinafter cited as "Tr."). The

³ The Psychologist further concluded that the Individual does not have a substance abuse disorder or "a mental condition which is impairing her judgement, reliability, stability, or trustworthiness at this time." Ex. 9 at 8-9.

LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted 13 exhibits, marked as Exhibits A through M.

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 her eligibility for a security clearance, citing the Bond Amendment and Guideline 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).

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person’s judgement, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. The conditions that could raise a security concern and may be disqualifying under Guideline J include: “[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, and evidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” Guideline J at ¶ 31(a)-(b). The LSO cites the Individual’s extensive history of criminal activity set forth above in invoking Guideline J. I find that the LSO’s concerns under Guideline J are justified.

As stated above, the Notification letter also cites the Bond Amendment. The Bond Amendment states, in pertinent part, that an agency may refuse to grant or renew a security clearance for an individual who “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than one year.” 50 U.S.C. § 3343(c)(1)(A). The LSO noted that the Individual was convicted, sentenced to eighteen months in federal prison in 1984, and served twelve months. I find that the LSO’s concerns under the Bond Amendment are justified.

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 entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 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. THE HEARING

The Individual’s mother testified on her behalf at the hearing. She testified that the Individual began to change her life and become a “better person” while she was incarcerated. Tr. at 20. She further testified that the Individual struggled with postpartum depression in the period prior to her incarceration and was associating with people who were bad influences. Tr. at 21-23. Her mother testified that the Individual no longer associates with the people who are a negative influence, and is motivated to avoid further incarceration. Tr. at 24, 26. She testified that the Individual has worked hard to make a better life for herself and her daughter, learn a trade, and become a certified electrician, like her father. Tr. at 25-26. The Individual now has a “beautiful home” in which to raise her daughter and has no desire to lose her new “lifestyle.” Tr. at 27. She further testified: “My daughter has transformed herself. She has risen from the careless, young woman into a more responsible adult, and out of her love for her daughter and her desire to do better, she has made substantial improvements on her life. And I know that she only wants to continue in that direction.” Tr. at 28.

The Individual’s fiancé testified on her behalf at the hearing. He testified that they have been together since 2018. Tr. at 36. He testified that the Individual has “changed a lot,” noting that, besides two traffic tickets, she has not engaged in any illegal conduct while he has known her. Tr. at 37. He testified that the Individual does not associate with drug users or use drugs and that her alcohol use is infrequent and is in moderation.⁴ Tr. at 39-40. The Fiancé testified that the Individual is now a family-oriented homebody whose focus is her daughter. Tr. at 37-39. He further emphasized that the Individual takes great care to avoid associating with the people with whom she used to get into trouble. Tr. at 41-42.

The Individual’s union representative testified on her behalf at the hearing. The union representative testified that he has known the Individual for four years and that she is a punctual, trustworthy, and dependable employee. Tr. at 52-54.

The Individual’s stepmother testified on her behalf at the hearing. The Stepmother has known the Individual for 25 years. Tr. at 58. The Stepmother testified that the Individual has made tremendous strides and that she is very proud of her. Tr. at 61-62. She testified that the Individual is now “very independent, very strong” and exhibits “integrity” and “professionalism.” Tr. at 62. She testified that her stepdaughter had “work[ed] very hard to get where she is at now” and has “applied herself and found a way to get past so many issues.” Tr. at 62. She further testified that

⁴ The Fiancé could only recall her using alcohol on two occasions since he has known her. Tr. at 40. Tr. at 37, 42.

the Individual's changes were motivated by her love for her daughter and her desire to set a good example for her. Tr. at 62-64. She was also impressed by the Individual's ability to put herself through school while being a single parent. Tr. at 65. The Stepmother testified that the Individual began changing for the better about four years ago and is much happier now. Tr. at 66.

The Individual's financial advisor testified on her behalf at the hearing. He has known her for about three years and has worked with her to establish a financial plan for her future. Tr. at 70, 72. He testified that the Individual's credit is very good, and that she has invested wisely by purchasing a home at a good price and interest rate. Tr. at 73. He further testified that the Individual "is a very responsible parent" and is very family oriented. Tr. at 73. The financial advisor was aware of the Individual's history of criminal activity, but has no concerns about her present honesty, reliability, and judgement. Tr. at 76-77.

The Individual's former teacher testified on her behalf at the hearing. He testified that he has known the Individual for about five years and that she is a "hard worker" and a "nice person." Tr. at 86, 87.

The Individual's father testified on her behalf at the hearing. He testified that he was "very impressed" by the way his daughter had changed her life and proud of her ability to overcome her past through her commitment, determination, and education. Tr. at 94, 96. He testified that she has "come a long way." Tr. at 98. He noticed a change in her after she was released from her last incarceration. Tr. at 98. He testified that she had changed "a bad life to a good life." Tr. at 99.

The Individual testified at the hearing. During her testimony, she acknowledged her extensive history of criminal activity. Tr. at 102-107, 119-125. The Individual testified that her post-partum depression had been a contributing factor to her criminal activity. Tr. at 105. She further described herself during this period as "hopeless," "directionless," and "looking for a place to fit in," which led her to choose the wrong friends. Tr. at 105. The people she befriended during her first incarceration were also a bad influence. Tr. at 106. The Individual acknowledged that she had managed to stay out of trouble from 2011 to 2015 but started getting in trouble again after that. Tr. at 107. The Individual testified that her desire to have a family, education, and career motivated her to change. Tr. at 107. When the Individual was asked why her criminal activity ended, she stated:

It stopped when I decided that I'm not going to associate myself with individuals that are getting into trouble and realizing that this isn't a way of life and that's not how I wanted to live my life, and definitely not an example I want to set for my daughter. It stopped when I decided to grow up. I decided where -- it stopped when I decided to take control of my own life and dictate what I want to happen in my life.

Tr. at 109. The Individual testified that she earned her GED while she was incarcerated and was able to further educate herself through grants and scholarships. Tr. at 109. She testified that her grades were good enough for her to obtain "a full-ride scholarship" and make the dean's list on several occasions. Tr. at 109-110. She also testified that she has been attending counseling on a weekly basis. Tr. at 113-114. She testified that her focus is on her family and that she avoids the

people she associated with in the past. Tr. at 115. She reported that she has been a state-licensed electrician journeyman since 2018. Tr. at 118-119.

V. ANALYSIS

The Individual has an extensive and significant history of criminal activity and incarceration. This history alone suggests that the Individual would be a poor candidate for a security clearance. However, the Adjudicative Guidelines instruct me to employ the “whole person concept” which requires that I carefully weigh a number of “variables of an individual's life” to determine whether that individual is an acceptable security risk. Adjudicative Guidelines at § 2(a). In the present case, I find that the Individual has resolved the security concerns raised by her criminal activity by showing that she has grown and matured, changed her behavior, obtained an education, obtained a professional license, established a successful career, and become a responsible parent. By doing so, she has exhibited good judgment, reliability, and trustworthiness during the past four years. It is also important to note that, after conducting a thorough review of her security file and a forensic psychological evaluation of the Individual, the Psychologist opined that the Individual was not likely to further engage in criminal behavior.

The credible hearing testimony of the Individual, as well as her mother, father, stepmother, fiancé, and financial advisor as well as the opinion of the Psychologist have convinced me that the Individual has grown and matured and now exhibits reliability, trustworthiness, honesty, and good judgement. During the Individual's testimony, she fully acknowledged her previous poor judgment and took responsibility for her actions. The opinion of the Psychologist as well as the Individual's testimony and that of her witnesses, have convinced me that she has learned from her mistakes and has become a responsible, law-abiding adult. In addition, the Individual has shown that she has earned several professional certifications, earned a professional license, completed her electrical apprenticeship, and has been meaningfully employed since 2018. Exs. A-M.

Given that the Guideline J and Bond Amendment concerns arise from the same conduct, I will analyze them together. As stated above, the Bond Amendment disqualifies an individual from holding a security clearance if that individual “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year and was incarcerated as a result of that sentence for not less than one year.” 50 U.S.C. § 3343(c)(1)(A). However, it also provides for a waiver from disqualification. 50 U.S.C. § 3343(c)(2)(B). This section provides that “[i]n a meritorious case, an exception to the disqualification...may be authorized if there are mitigating factors” authorized in accordance with the Adjudicative Guidelines. *Id.*

Guideline J sets forth four conditions that, if present, may mitigate security concerns arising under Guideline J. Two of those mitigating conditions are present in the instant case. Section 32(a) provides that security concerns arising from criminal conduct can be mitigated when: “So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” Adjudicative Guideline J at § 32(a). Four years have passed since the Individual's last arrest, and as I have discussed above, the opinion of the Psychologist and the testimony I heard at the hearing has convinced me that her criminal activity is unlikely to recur. Section 32(d) provides that security concerns arising from criminal conduct can be mitigated when: “There is evidence of successful rehabilitation; including, but not limited to, the passage of

time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.” Adjudicative Guideline J at § 32(d). In the present case, there is abundant evidence of successful rehabilitation: The Individual has acknowledged that she exercised poor judgment and behaved inappropriately in the past and has exhibited a change in behavior for the past four years. Moreover, she has successfully completed extensive job training and has a very good employment record.

Accordingly, I find that the Individual has mitigated the Guideline J security concerns, and I additionally find that her disqualification from holding a security clearance pursuant to the Bond Amendment is eligible for a waiver. Guideline J at ¶ 32(a), (d); 50 U.S.C. § 3343(c)(2)(B). As such, I find that the DOE should grant access authorization to the Individual.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J as well as the Bond Amendment. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline J and the Bond Amendment. Accordingly, the Individual has demonstrated that granting her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should be granted. The parties 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
Administrative Judge
Office of Hearings and Appeals