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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: July 21, 2021) Case No.: PSH-21-0088
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Issued: November 5, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or 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 access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In June 2000, agents of the Federal Bureau of Investigation (FBI) confronted the Individual at his place of employment, a DOE contractor facility, regarding the use of his work computer to view “sexually explicit materials” involving minors. Ex. 5 at 1; Ex. 6 at 79. The Individual had been questioned on four occasions² since being confronted by the FBI and had provided discrepant answers as to whether he had viewed child pornography. Ex. 1. Due to unresolved security concerns related to the Individual’s honesty and criminal activity, the LSO informed the Individual, in a December 21, 2020, Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised

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.

² In 2002, the Individual was questioned in a Personnel Security Interview (PSI) and a psychiatric evaluation. Ex. 1. In 2012, the Individual underwent a second PSI, and in 2018, he underwent an Enhanced Subject Interview (ESI). Ex. 1. Finally, in 2019, he completed a Letter of Interrogatory. Ex. 4.

security concerns under Guideline E (personal conduct) and Guideline J (criminal activity) of the Adjudicative Guidelines. *Id.*

Upon receipt of the Notification Letter, the Individual exercised his 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 seven numbered exhibits (Exhibits 1-7) into the record. The Individual introduced four lettered exhibits (Exhibits A-D) into the record and testified on his own behalf. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate 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) (strong presumption against the issuance of a security clearance).

An 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). An 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.

III. Notification Letter and Associated Security 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 cites Guideline E and Guideline J of the Adjudicative Guidelines. Guideline J relates to security risks arising from criminal conduct. Criminal conduct “calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. In citing Guideline J, the LSO relied upon the Individual’s admissions, during a 2018 Enhanced Subject Interview (ESI) and in a 2019 Letter of Interrogatory (LOI), that, in 2000, he “viewed pornographic images of children between the ages of 10 to 12 years old who were photographed in their underwear and also nude.” Ex. 1 at 2.

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.* In support of Guideline E, the LSO cited that, in a 2002 Personnel Security Interview (PSI), a 2002 psychiatric evaluation, and a 2012 PSI, the Individual denied viewing child pornography in 2000. Ex. 1. However, in a 2018 ESI, the Individual admitted that, in the year 2000, he “viewed images of children 10 to 12 years old in their underwear and of children who were nude.” Ex. 1.

IV. Findings of Fact

At the hearing the Individual testified on his own behalf. He testified that in approximately 2000, the FBI confronted him at work regarding the use of his work computer to view sexually explicit material.³ In 2002, he underwent a PSI. Tr. at 14-15, 17. In recalling the PSI, the Individual testified that, during the PSI, he stated that, although he did view pornographic material on his work computer, the material was “not of a pornographic nature of minors.” *Id.* at 18.

Shortly after the PSI, the Individual underwent a psychiatric evaluation conducted by a DOE consultant psychiatrist (Psychiatrist). Ex. 5. During the evaluation, the Individual stated that he “viewed sexually explicit materials on a facility-owned computer in his cubicle,” and he did so “every one to two weeks over a period of two to three months.” *Id.* at 1. He also stated that he viewed similar material on a facility-owned laptop at his home. *Id.* He stated that he used the laptop for this purpose “once a week over a period of approximately a year.” *Id.* The Individual stated that he did not view any pornographic materials involving children. *Id.* Ultimately, the Psychiatrist determined that the Individual did not present with a “mental illness or disorder.” *Id.* at 6.

In 2012, the Individual underwent a second PSI. Ex. 6. During the PSI, the Individual explained that the DOE contractor informed him that it “was done with” his contract as he had “pornography type material” on his work computer. *Id.* at 9. When asked about the type of pornography that he viewed, the Individual stated that he “believe[d]” it was “adult only” pornography. *Id.* at 10. The Individual later stated, however, that he may have unintentionally viewed sexually explicit material containing minors. *Id.* at 70-71. Specifically, he stated, “I might have clicked on some that, based on a title or description and it went to a site where the people look young, I don’t know if they were over age or not.” *Id.* at 71.

In 2018, the Individual underwent an ESI, during which he stated that he “stumbled across pornographic material while researching” a camera lens. Ex. 7 at 57. The Individual told the interviewer (Interviewer) that he “clicked on something and it opened other things” that were pornographic in nature. *Id.* The Interviewer reported that the Individual stated that he “initially clicked out of curiosity, but knowingly continued clicking on each link, page, and site.” *Id.* The Individual stated that some of the photos he viewed contained children who were 10-12 years old. *Id.* He elaborated that the photos were of children both nude and in their underwear. *Id.* The Individual reported that he “thinks” the viewing of pornography was a one-time event, and he

³ The Individual would not acknowledge during the hearing that the FBI interviewed him regarding child pornography; however, in his 2012 PSI, the Individual acknowledged that the FBI questioned him about child pornography and searched his house looking for child pornography. Ex. 6 at 79.

viewed the material for approximately one to two hours, spending about half of the time viewing the children. *Id.*

In the 2019 LOI, the Individual reported that, in reference to the same above incident, he “accidentally view[ed] images of minors when searching the internet for [an item], but those were not pornographic.” Ex. 4. He acknowledged, however, that he did view adult pornography on a government issued computer. *Id.*

During the hearing, the Individual recalled the 2000 incident of viewing sexually explicit material on his work computer. Tr. at 13. He explained that, around the year 2000, while researching a rare camera lens, he came across “a chat forum or something . . . and that showed pictures of minors.” *Id.* He stated that the photos were not pornographic in nature. *Id.* Although the Individual acknowledged that he viewed adult pornography, he did not “remember any of minors.” *Id.* at 18. When asked about the duration of time that he spent viewing the pornographic material, he stated that it was “definitely less” than an hour, perhaps 10 or 15 minutes. *Id.* at 20, 41. When asked why he chose not to immediately exit the browser when images of children in their underwear appeared on his work computer, he replied that he did immediately close the window, but that he proceeded to view adult pornography on another occasion.⁴ *Id.* at 41-42.

The Individual disputed the accuracy of the report of the 2018 ESI. *Id.* at 21. He felt that the interview was very “hostile” and “stressful,” and he did not “recall saying things that specific.” *Id.* at 25-26. The Individual stated that he did not remember telling the Interviewer that the children were nude in the photos, and he reaffirmed that he did not view any photographs of nude children. *Id.* at 27. When questioned further on this matter, the Individual acknowledged that he viewed “children in their underwear,” but he was not sure if these images were pornographic in nature as there were “no sexual things going on between them.” *Id.* at 28. The Individual stated that, contrary to the report of the ESI, he did not “spend a half hour to an hour viewing pornographic images of 10- to 12-year-olds.” *Id.* at 26. He later clarified that he did not spend any time viewing the children in their underwear. *Id.* at 42. He described the discrepancies between the ESI and the truth of what he alleged to have occurred as a misunderstanding between him and the Interviewer. *Id.* at 32-33.

The Individual argued that, in the 20 years since he was viewing pornography on his work computer, he has “grown and matured.” *Id.* at 33. He testified that he felt that he has been honest about his conduct since 2000, but he noted that he is “not very good in interviews.” *Id.* at 46. He stated that he has been successful in his career, is a responsible parent, and tries to be a great role model. *Id.* He submitted four letters of recommendation from people in his life; however, he noted that none of these individuals were aware of the “back story” or the allegations against him. *Id.* at 36; Ex. A-D. He further noted that although his wife was aware of the child pornography allegations in 2000, he had not informed her, or anyone in his life, that his clearance had been revoked due to these same allegations. *Id.* at 34,44. The Individual explained that withholding this information from people in his life did not leave him vulnerable or open to exploitation or manipulation because he “would tell anybody . . . why my clearance was revoked.” *Id.* at 44.

V. Analysis

⁴ The Individual testified that the later occasion might have been a “later day, might have been a later week.” Tr. at 42.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witness 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 noted by the LSO regarding Guideline E or Guideline J. 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.

Due to the interconnected nature of the Guideline E and Guideline J security concerns, I will analyze them together. Pursuant to Guideline J, evidence (including a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether an individual was formally charged, prosecuted, or convicted, can disqualify an individual from holding a security clearance. Guideline J at ¶ 31(b). If so much time has elapsed since the criminal behavior occurred, 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, the individual may be able to mitigate the security concern. *Id.* at ¶ 32(a).

Under Guideline E, 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, such as engaging in activities which, if known, could affect the person's personal, professional, or community standing, may disqualify an individual from holding a security clearance. Guideline E at ¶ 16(e)(1). If the offense is so minor, or so much time has elapsed since the criminal behavior occurred, 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, the individual may be able to mitigate the security concern. *Id.* at ¶ 17(c). Furthermore, if the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress, he may be able to mitigate a Guideline E security concern. *Id.* at ¶ 17(e).

In this case, the Individual has provided numerous different accounts regarding the details of the pornographic images he viewed on his computer in 2000. While I acknowledge that many years have passed since the relevant conduct occurred, allegations of viewing child pornography, accompanied by an investigation by the FBI, would, likely, leave a significant and memorable impact on one's life. Notably, the Individual has not just provided differing accounts of small details in this case, but has provided differing information about key facts, such as whether the children in the images were clothed, how long he viewed the images, and whether the viewing of pornography at work was a one-time accident or a fairly regular occurrence. He attributes these discrepancies, at various times, to not remembering the events, a "misunderstanding," or not being "very good in interviews." However, upon a review of the record and the Individual's testimony, I find his varying descriptions to be not only confusing but evasive.

Although 20 years have elapsed since the Individual viewed sexually explicit material involving a minor, I cannot find that so much time has passed since the criminal behavior occurred, 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. I make this finding because I do not

believe the Individual to be credible. The Individual provides such an indecipherable accounting of what initially occurred with the images of children on his computer that it casts significant doubt as to the Individual's reliability, trustworthiness, or good judgment. *Contra* Guideline J at 32(a); Guideline E at ¶ 17 (c). Furthermore, I find that in choosing to conceal from the people in his life (including his wife) that his clearance has been revoked due to concerns around viewing child pornography, he continues to leave himself vulnerable to exploitation, manipulation, and duress. Guideline E at ¶ 16(e)(1); *contra id.* at ¶ 17 (e). As such, I cannot find that the Individual has mitigated the Guideline E or Guideline J security concerns.

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 J. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, 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