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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: October 18, 2023) Case No.: PSH-24-0009
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Issued: January 30, 2024

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

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

I. Background

The present case involves an individual who has an extensive history of at least 32 instances of criminal activity beginning in May 1979 and continuing through November 22, 2021, when he was arrested for Battery on a Household Member. On November 10, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO) in which he reported 17 instances where he was either arrested or charged with criminal offenses. Exhibit (Ex.) 6 at 74–90. In addition, the background investigation of the Individual uncovered 15 other instances of the Individual engaging in criminal activity, including five instances where the Individual was “suspected” of engaging in criminal activity, in 2009, 1992 (twice), 1988, and 1987; three instances where courts issued protective orders against the Individual, in 2014, 2008, and 2005; and one instance of a domestic violence call at his residence in 2021. Ex. 8 at 239–248, 258, 409–411, 420–422. The Individual’s criminal history includes 12 Driving Under the Influence (DUI) or Driving While Intoxicated (DWI) arrests, in 2000, 1996, 1994 (twice), 1991, 1990 (twice), 1987, 1985, 1984, 1982, and 1981; two misdemeanor prostitution charges, in 2014 and 2012; two Battery Against a Household Member charges, in 2021

¹ Under the regulations, “[a]ccess 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.

and 2009; and charges for: Receiving Stolen Property, in 1979; Possession of Illegal Game and Trespassing, in 1990; No Insurance; Child Restraint; Open Container/Littering; Driving on a Suspended License, in 1988; Driving on a Revoked License, in 1994; and Assault, in 1995. Ex. 6 at 74–90.

The LSO asked the Individual to complete a letter of interrogatory (LOI) regarding his two misdemeanor prostitution charges.² Ex. 4 at 27. In the LOI, the Individual acknowledged that one of the convictions had occurred because he had illegally patronized a sex worker, but claimed that the other conviction was unfair, since he had merely been in the presence of a convicted sex worker for legitimate reasons. Ex. 5 at 32–34. He further claimed that he had not engaged in that behavior since 2014 and that he had learned from his past mistakes. Ex. 5 at 32–34.

After receiving and reviewing this information, the LSO began 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 to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded his 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 two witnesses: the Individual and his niece (Niece). *See* Transcript of Hearing, Case No. PSH-24-0009 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8. The Individual submitted three exhibits, marked as Exhibits A through C.

Exhibit A consists of documentation of the Individual’s court records. Ex. A. Exhibit B contains emails from courts stating that they did not have records of certain criminal activity alleged in the Summary of Security Concerns (SSC). Ex. B. Exhibit C contains a letter from the Individual’s employer, who writes that the Individual is “a very reliable and trustworthy person.” Ex. C at 1. The employer further describes the Individual as “honest,” “dependable,” and “very responsible.” Ex. C at 1. The Employer also notes that the Individual “always shows up on time.” Ex. C at 1.

II. The Notification Letter and the Associated Security Concerns

The SSC attached to the Notification Letter informed the Individual that information in the possession of the DOE creates substantial doubt concerning his eligibility for a security clearance under Guideline J (Criminal Activity) of the Adjudicative Guidelines.

Under Guideline J, the LSO cites the Individual’s extensive criminal history. These allegations adequately justify the LSO’s invocation of Guideline J. The Adjudicative Guidelines state: “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is “[e]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether

² The LOI did not ask the Individual to address any of the other arrests or convictions that he listed on his QNSP or any of the other arrests or convictions that were allegedly discovered in the course of his background investigation.

the individual was formally charged, prosecuted, or convicted.” Adjudicative Guidelines at ¶ 31(b).

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).

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.

IV. Hearing Testimony

The Niece testified at the hearing that she has known the Individual for more than fifty years. Tr. at 11. Recently, she has communicated with him on a weekly basis, but historically has communicated with him about once a month, primarily by phone. Tr. at 11. The Niece testified that it was her belief the Individual is able to follow rules, laws, and regulations because the majority of his law enforcement interactions were a long time ago, and he has made “a lot of changes to his life.” Tr. at 13. She also stated that many of the Individual’s interactions with law enforcement were caused by issues between him and his live-in partners. Tr. at 14. The Niece said that the Individual no longer has regular contact with any of these former partners except for contact with his child’s mother related to child support. Tr. at 17, 19. She also stated that the Individual now disputes the January 2016 Disturbing the Peace arrest mentioned on the QNSP because he does not recall it and she could not find any records of this arrest. Tr. at 22–23. She said he also disputed the 1982 DUI listed on the QNSP because the Individual was in Germany as a service member at the time.³ Tr. at 23–24. The Niece explained that she felt that the Individual showed good judgment in helping his sister and acting as a father figure to her and her siblings when she was a child. Tr. at 25.

³ In response to questions in the QNSP asking him to list his convictions and the dates on which they occurred, the Individual stated that he was convicted for DUI in “01/1982 (Estimated).”

The Individual testified at the hearing that most of the domestic disputes he was involved in arose when the relationships were ending and that he no longer associates with any of those women, though he did note that one of these women is the mother of one of his children and still calls him. Tr. at 31. He now lives by himself. Tr. at 31. When the Individual was asked if he understood why DOE would be concerned about his history of domestic violence issues he stated: “I don't really know why it would be a concern because on most all of them incidents they didn't show up to court. They were pretty much like false statements.” Tr. at 32. These domestic violence issues involved three different women. Tr. at 32. He also stated that in order to prevent himself from being in situations that involve law enforcement in the future, he will “no longer hang around with people like that” and that he “choose[s] [his] friends better now, and better judgment.” Tr. at 33. The Individual did note, however, that, at his age, he now lives a quieter, more sedate lifestyle than before. Tr. at 34. He further attributed some of his criminal history to his youthfulness at the time. Tr. at 34–35. The Individual said that he has not sought out any counseling to help with his decision making, but he does attend mass at the Catholic church. Tr. at 34. He testified that specifically in regard to the 2012 prostitution incident, he was trying to help a lady who asked for help fixing her car, and it was poor judgment. Tr. at 35.

V. Analysis

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns arising under Guideline J, three of which are relevant to the present case.⁴ First, an individual may mitigate security concerns under Guideline J if they can show that “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 Guidelines at ¶ 32(a). In the present case, approximately two years have elapsed since the last occurrence of criminal activity, which came at the end of a particularly extensive and long-term pattern of criminal activity which continued into the Individual’s late fifties. As the Individual’s pattern of criminal activity goes back over forty years, and he was unable to articulate any concrete changes that he has made to avoid future criminal activity, I cannot find that this behavior is unlikely to recur. Moreover, the Individual’s relatively recent criminal activity continues to cast doubt on his current reliability, trustworthiness, and good judgment. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 32(a).

An individual may also mitigate security concerns under Guideline J if they can show that they were “pressured or coerced into committing the act and those pressures are no longer present in the person’s life.” Adjudicative Guidelines at ¶ 32(b). In the present case, the Individual argues that his most recent interactions with law enforcement occurred due to his involvement in dysfunctional and unhealthy relationships and that he is no longer involved in those relationships.

⁴ Adjudicative Guidelines ¶ 32(c) provides for mitigation when an individual is able to show that no reliable evidence shows that they engaged in the alleged criminal activity. In the present case, the Individual does not deny the majority of the criminal activity cited in the SSC; therefore, this factor need not be considered.

However, he did not testify that he was pressured or coerced into the acts that occurred during those relationships. As such, I find that the Individual has not shown that he has met the mitigating condition set forth in ¶ 32(a).

An individual may also mitigate security concerns under Guideline J if “[t]here 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 Guidelines at ¶ 32(d). In the present case, two years have passed since the last incident of criminal activity, however given the extensive nature of the Individual’s criminal history, a two year pause in his criminal activity is insufficient to resolve the serious security concerns raised by the 32 incidences of criminal activity on the Individual’s part cited in the SSC. Moreover, the Individual has not shown that he has completed any activity that could be termed “successful rehabilitation.” While the Individual apparently has maintained a good employment record over the years, that fact does not mitigate the security concerns raised by his extensive criminal activity, since much of his criminal activity appears to have resulted from his poor impulse control (eight instances of domestic violence and two prostitution charges) and alcohol use (12 DWIs and DUIs, and one Open Container violation). Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 32(d) are present.

I therefore find that the security concerns raised under Guideline J by the Individual’s criminal activity have not been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under 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, the Individual’s security clearance should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals