* 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: November 9, 2012	)	Case No.: PSH-12-0130
	)	
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Issued: April 1, 2013

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."[1] For the reasons set forth below, I conclude that the DOE should not grant the individual access authorization at this time.[2]

I. BACKGROUND

The individual is an employee of a DOE contractor and an applicant for an access authorization. In 2001, the individual was indicted for violation of a federal criminal statute governing conduct of federal employees.[3] In 2010 and 2011, while in her current position, the individual committed security infractions by bringing a cell phone into a Controlled Access Area. Considering this information, a Local Security Office (LSO) determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

[2] Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm.

[3] 18 U.S.C. § 208 (acts affecting a personal financial interest).

concerns. Exhibit 3 (Notification Letter). The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced 13 exhibits into the record of this proceeding. The individual introduced 14 exhibits and presented the testimony of four witnesses, in addition to her own testimony.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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 regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. DERROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (g) and (l) (hereinafter referred to as Criteria G and L, respectively). Exhibit 3.[4] Under Criterion G, the LSO cited the individual's two security infractions for bringing a cell phone into a Controlled Access Area in 2010 and 2011.

[4] Criterion G defines as derogatory information indicating that the individual has "[f]ailed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information; or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems." 10 C.F.R. § 710.8(g). Under Criterion L, information is derogatory if it indicates that the individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

Under Criterion L, the Notification Letter cited a September 29, 2001, indictment of the individual for "Violation of 18 U.S.C. 208, 'Conflict of Interest,'" The Notification Letter also cited a report of an investigation initiated on January 22, 2001, by a federal agency Inspector General's Criminal Investigative Service. However, a releasable copy of this report was not made available to the individual and is not in the record of this proceeding. Therefore, the DOE Counsel stated that the Department would, in support of the relevant allegations in the Notification Letter, rely upon a prior decision of the Department of Defense Office of Hearing and Appeals. Email from DOE Counsel to Hearing Officer and Counsel for Individual (January 23, 2013); Hearing Transcript (Tr.) at 4-5, 9 (no objection from counsel for individual). That decision, which was among the exhibits submitted by the DOE Counsel, denied a previous application by the individual for a security clearance. *In the Matter of Applicant for Security Clearance*, ISCR Case No. 08-09337 (Defense Office of Hearings and Appeals, July 23, 2009), *aff'd*, (Appeal Board, October 16, 2009) (hereinafter referred to as "DOHA Decision").

The Part 710 regulations require that the Hearing Officer "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. The individual has disputed two of these allegations. The first is a reference in the Notification Letter to the brand of cell phone brought into the Controlled Access Area, and the second is an allegation that the individual solicited a bribe, the latter citing the Report of Investigation that is not in the record. The DOE Counsel agreed that the documents in the record do not support the allegation of a bribe. Tr. at 11. As to the brand of cell phone, I find this detail to be of no relevance to the present decision.

With these exceptions, I find the allegations in the Notification Letter to be valid and well supported by the record in this case. I further find that the allegations adequately justify the DOE's invocation of Criteria G and L, and raise significant security concerns. Under Criterion G, the deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (*Adjudicative Guidelines*), The White House (December 19, 2005) at ¶ 33; *see also id.* at ¶15.

Under Criterion L, criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. The allegation of such conduct raises a security concern, regardless of whether the person was formally charged, formally prosecuted or convicted. *Adjudicative Guidelines* at ¶ 31(c).

III. FINDINGS OF FACT

The individual was an employee of the U.S. government from 1982 until 2001, and held a security clearance throughout this period. Tr. at 18-23. In 2000, the individual's job, as described in her hearing testimony, was to perform "internal operation assessments." *Id.* at 34-35. In that capacity, the individual's team "would visit our field activities and . . . as a technical lead, as an engineer, I would ensure that the engineers were complying with the requirement[s] . . . on developing their surveillance plans and performing surveillance on their contractors, ..." *Id.*

As a result of an internal operations assessment that her team performed in February 2000, the performance ratings of one of the agency's field offices were "very bad." *Id.* at 42. In her testimony, the individual explained that her team would "also go out and assist people in helping them because the next review that comes up they want to be improved." *Id.* Thus, the individual "was requested to go out and assist these engineers on how to develop their surveillance plans and to monitor and observe and then report back . . . as to how they did." *Id.*

In the fall of 2000, the individual visited this field office and assisted an engineer, "observing how he developed his surveillance plan so that he could do his job performing surveillance on the contractor." *Id.* at 44. This work included accompanying the engineer on two or three visits to the contractor's facility. *Id.* at 48. According to the individual, on their last visit to the facility, in December 2000, "as we were getting ready to leave, I thanked [the contractor's program manager] for his time and told him, oh, by the way, I gave him my government business card and told him if he ever needed any procedures written for the future give me a call." *Id.* at 48, 49.

At the hearing, the individual explained that she did this because she intended to get a "business together to do outside employment to start writing procedures, whether environmental, reliability or just engineering procedures." *Id.* The individual testified that, prior to this, she had never before engaged in employment outside her federal government job, nor had she ever given out a business card in a similar context. *Id.* at 160.

In late January 2001, the contractor program manager to whom she had given her government business card contacted her by telephone. *Id.* at 58. As the individual recalled in her testimony, the program manager told her that he was "wondering if you could write some reliability, maintainability and [other] procedures for me." *Id.* at 166. She told him that she would check into that and would have to talk to her supervisor. *Id.* at 166-67. The program manager then told the individual that the government engineer with whom the individual had worked during her site visit had issued to the contractor "a Corrective Action Request as a result of your visit or when you were down here." *Id.* at 167. The individual expressed surprise at this and told the program manager that she would discuss the matter with her supervisor. *Id.* at 167, 171.

There is no contemporaneous evidence in the record documenting any of the communications described above, all of which took place on or before January 30, 2001. However, copies of emails and memoranda dating from January 30 to February 16, 2001 were submitted as exhibits by the individual. These exhibits document the following events with regard to both the individual's request for approval of outside employment and the status of the presumably separate issue, concerning the Corrective Action Request (CAR) issued to the contractor:

January 30, 2001 (2:56 pm) - The individual emailed her supervisor, copying an agency associate general counsel responsible for providing advice on ethics matters (hereinafter referred to as "the ethics counselor"). The individual requested approval to perform the work requested by the contractor. Exhibit F at 3.

January 30, 2001 (3:02 pm) - The supervisor emailed the ethics counselor seeking advice "as to what factors I need to consider to approve" the individual's request. *Id.*

February 1, 2001 (6:24 pm) - The ethics counselor emailed the supervisor, expressing concern that the proposed outside employment "could conflict with her official duties" and asking several

specific questions about the work and the individual's dealings with the contractor in her official capacity. *Id.*at 2.

February 2, 2001 (7:41 am) - The supervisor emailed the individual, copying the ethics counselor, and directed the individual to respond to each of the questions in the ethics counselor's email, and stating "Your request is not yet approved. You are not allowed to perform compensated work for this company until you get the approval." *Id.*

February 2, 2001 (8:23 am) – The individual emailed her supervisor, copying the ethics counselor, providing more information about her federal position and the work requested by the contractor. She stated that the "outside position does not conflict with my official duties because I will perform the work from home. . . . I do not have any dealings with [the contractor] in my current official capacity." Exhibit E.

February 2, 2001 (8:26 am) – The individual emailed the contractor's program manager from her government email account, informing him that "[t]he total cost will be for 80 hrs at $75 per hours. We can negotiate on the hours. I will send the hard copy overnight express so that it's in your office by Monday." Exhibit D.

February 2, 2001 (8:38 am) – The individual's supervisor emailed the ethics counselor asking whether the information provided by the individual "answer[ed] your questions adequately? Based upon the information below, I am inclined to approve [the individual's] request. However, I do believe I need to caution her that no Government resources can be used to perform this work." Exhibit E at 1.

February 2, 2001 (8:43 am) – The individual emailed her supervisor, copying the ethics counselor, informing them that she would be employed by a third-party subcontractor in performing the work for the contractor. Exhibit F at 2.

February 2, 2001 (11:20 am) – The ethics counselor emailed the individual and the supervisor, seeking additional information regarding the proposed outside employment and whether the individual's office had "dealings with the companies in question. That is very important. Also, the potential for conflict of interest does not go away because you are performing the duties at home. It is the nature of the work and who you are performing it for that must be reviewed." *Id.* at 1-2.

February 2, 2001 (11:49 am) – The individual's supervisor emailed the individual and the ethics counselor, providing additional information regarding his office and the outside employment proposed by the individual. He stated that he did "not see any conflict of interest in [the individual's] proposed employment. She has assured me that no Government resource will be used to perform this employment." *Id.* at 1.

February 5, 2001 (4:25 am) – The contractor's program manager emailed the individual, stating that he had received the individual's proposal and asking for information in order to "get the [purchase order] moving along." Exhibit G.

February 5, 2001 (8:50 am) – The individual emailed the contractor's program manager from her government email account, providing information requested by the program manager. *Id.*

February 8, 2001 – The individual sent a memorandum to the ethics counselor, providing additional information, and stating that in her current position, "I do not have any direct contact with defense contractors. . . . Please advise on approval or disapproval of this employment." Exhibit H.

February 15, 2001 (10:45 am) – Another employee of the contractor emailed the individual, stating that he was not available when the individual had called and that he was glad to hear that the field office engineer who had issued the CAR to the contractor had "closed the CAR. But we haven't received a fax or anything from him yet. Also, did you put your proposal in Fed Ex like we discussed. We haven't received that either." Exhibit I.

February 15, 2001 (11:01 am) – The individual emailed the contractor employee from her government email account, stating:

> I have been so busy that it slipped my mind. I am on my way to do it now. Thanks for the reminder. About the CAR, have [the contractor's program manager] send a message to [the field office engineer] asking him for a copy of the closed CAR. I should keep as low a profile on this as possible. [The contractor] can request a copy of the closed CAR. If he doesn't provide you a copy by the time I get there, I'll see what I can do to expedite it.

Id.

February 16, 2001 (10:40 am) – The ethics counselor emailed the individual and the individual's supervisor, requesting addition information and stating that, "[a]bsent more detailed information from you, I am not in a position to make a recommendation one way or another regarding approval." Exhibit J.

February 16, 2001 – The individual sent a memorandum to the ethics counselor, providing additional information and stating that she does "not have any direct contact with [the contractor] or any other defense contractor in performing my current duties as described above. Please advise on approval or disapproval of this employment." Exhibit K.

On February 20, 2001, the individual and an associate met with the contractor employee who had emailed her on February 15, and the individual received a payment of $12,000. Only after receiving the payment did the individual learn that the person she believed to be a contractor employee was, in fact, an agency criminal investigator. As noted above, the individual was subsequently indicted for violation of a federal criminal statute, though she was ultimately found not guilty after a jury trial. DOHA Decision at 5.

The individual resigned her government position in 2001, and worked for a number of private companies, including government contractors. In 2008, while working for a contractor, she applied for a security clearance with the Department of Defense, which was denied in the DOHA decision cited in the Notification Letter. DOHA Decision at 2, 14.

At the DOHA hearing, the criminal investigator testified that he had learned of allegations that the individual, during her visit to the contractor's site, "noted that the contractor needed procedures

written for the contract and she had a business on the side that could help them write the procedures." *Id.* at 4. He further testified that he interviewed the agency field office engineer, who alleged that the individual directed him to prepare and issue a CAR. *Id.* at 5. The individual denies both of these allegations.

In 2010, the individual began working for the DOE contractor by whom she is currently employed and, in 2010 and 2011, was cited for the security infractions described above.

IV. ANALYSIS

A. Criterion G

For the following reasons, I find that the valid concern raised by the individual's security infractions in 2010 and 2011 has been sufficiently resolved. First, there is no allegation that the individual intentionally violated the rules prohibiting bringing a cell phone into a Controlled Access Area. *See* Exhibit 10 (contemporaneous reports of security incident/infraction listing cause as human error and inattention to detail). While even a negligent failure to follow such rules can raise a concern, *Adjudicative Guidelines* at ¶ 33, the individual's lack of intent must be considered as a mitigating factor. 10 C.F.R. § 710.7(c) (requiring consideration of the "circumstances surrounding the conduct, to include knowledgeable participation").

The individual made this mistake twice, in August 2010 and May 2011. Thus, the most recent incident was nearly two years ago, and was hardly a frequent occurrence, considering that it has the potential to occur each and every workday. *See id.* ("frequency and recency of the conduct"). Moreover, the individual testified that, on both occasions, she self-reported the infraction. This is supported by the contemporaneous report of one incident and not contradicted in the other. Exhibit 10; *see Adjudicative Guidelines* at ¶ 2(e)(1) (adjudicator should consider whether the person voluntarily reported information of security concern).

Finally, I note that the individual received re-training after both incidents, Exhibit 10, and this appears to have reinforced her diligence thereafter, given the lack of any similar incident since May 2011. *See id.* at ¶ 35(b). Taking into account all of these factors, I find that the behavior raising this concern is unlikely to recur and no longer casts doubt on the individual's current reliability, trustworthiness, and good judgment. *See id.* at ¶ 35(a); *see also id. at* ¶ 17(c). As such, the concern has been resolved. *See Personnel Security Hearing,* Case No. PSH-12-0098 (2013) (individual mitigated concerns raised by, among other things, taking cell phone into a security area on two occasions, in 2009 and 2010); *Personnel Security Hearing*, Case No. PSH-12-0081 (2012) ("self-admitted past of security mistakes," including bringing a cell phone into a controlled area, "does not constitute a pattern of misconduct that predicts a similar future").

B. Criterion L

As noted above, the individual was found not guilty of the crime with which she was charged in 2001. However, the concern in this case is raised by the underlying conduct leading to the criminal charge, regardless of the outcome of any criminal proceeding. *See Adjudicative Guidelines at* ¶ 31(c). Moreover, a Part 710 proceeding is not a forum for determining, beyond a reasonable doubt, whether the individual is guilty of a crime. Unlike in a criminal proceeding, I am not allowed

here to give the individual the benefit of the doubt. 10 C.F.R. § 710.7(a) ("Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.").

For the reasons explained below, after considering the entirety of the record, I am left with substantial doubts regarding the actions of the individual in 2000 and 2001 and, perhaps more importantly, substantial doubts regarding the credibility of her testimony at the hearing in this case. I therefore do not find that the individual has resolved the concerns in this case under Criterion L.

The individual acknowledges that the relevant regulations required that she receive the written approval of her supervisor before engaging in the outside work she undertook in February 2001, and that she did not follow these procedures. *See, e.g.,* Tr. at 101, 112; DOHA Decision at 7 (citing ethics regulations). Asked whether she was aware of the relevant procedures at the time, the individual stated, "I don't believe so. I made a very big mistake by not getting written approval." Tr. at 185. The individual, who as noted above, was a federal employee from 1982 to 2001, acknowledged that she received ethics training every year. *Id.* at 99.

Nonetheless, the individual contends that she thought she had the approval of her supervisor at the time she performed the work. *Id.* at 81, 79, 100. "Absolutely, yes. The last time I had spoken with [my supervisor] he said that he couldn't understand why [the ethics counselor] couldn't understand and that he had final decision on this and he didn't see any conflict of interest." *Id.* at 78. "I had been in contact with my supervisor and, to my knowledge, I had approval." *Id.* at 186. "In my conversations from [January 31, 2001] throughout until I delivered [the work product to the contractor], I believed I had approval to do it." *Id.* at 188.

Based upon what I find to be the most reasonable reading of the contemporaneous communications in the record, the individual's claim that she believed she had the approval of her supervisor is simply not credible. If, as she testified, she understood that her supervisor "had final decision" on the matter, and the decision had already been made, there would have been no reason for the continued communications back and forth between the ethics counselor and both the individual and her supervisor.

When asked whether she had begun work for the contractor prior to her February 8, 2001, memorandum to the ethics counselor, the individual responded, "I believe so. We had asked after that February 2nd e-mail from [my supervisor] stating that he didn't see any conflict of interest and discussions with him, I took that as approval." Tr. at 189-90. Nonetheless, in closing both her February 8 and February 16 memoranda to the ethics counselor, the individual stated, "Please advise on approval or disapproval of this employment." Exhibit H; Exhibit K. In explaining this request for approval that she believed she already had, she testified that this "was something that you normally would write to anyone. How can I explain it. That is just like asking for approval of one person and another person is involved in trying to get concurrence with them, even though that individual had the final approval." Tr. at 100-01.

Even assuming, *arguendo*, that the individual did have the approval of her boss for her outside work, the evidence is very clear that it would have been given under false pretenses, *i.e.,* with the express understanding, set forth in two emails from her supervisor, that no government resources would be used to perform the work. Exhibit E at 1 ("I need to caution her that no Government resources can

be used to perform this work."); Exhibit F at 1. ("She has assured me that no Government resource will be used to perform this employment.").

When I asked the individual at the hearing whether it was correct that, "aside from not getting written approval from your boss, . . . you don't consider anything you did as far as the business that you undertook, . . . that you don't believe any of that was wrong in any way," the individual responded: "I believe other than getting that written approval and communication with the direction that I was given for conflict of interest definitions and work being performed for outside employment, that is correct." Tr. at 197.

However, the individual later agreed that her supervisor's understanding was that no government resources were to be used to perform work, and that this was "not true. As you can tell from my e-mails, I sent e-mails to [the contractor]. . . . [T]hat was not a true statement that I did not use government [resources], I admit to that." *Id.* at 199.

> Q Was that proper? In your mind?
>
> A That was improper.
>
> Q Was there any other, other than that, any other use of government resources in this work?
>
> A Nothing other than them calling me on the phone and me speaking to them on the phone, no.
>
> Q The actual work would have been done off the premises of [the agency]?
>
> A It was done at home on my government computer.
>
> Q On your government computer?
>
> A That we were assigned, yes, sir. And some of it was done on [my associate's] computer.
>
> Q These were computers you were assigned to use at home?
>
> A To use, yeah, home, business, we were assigned as a team, we had our own computers that were assigned to us for personal and for business use.
>
> Q But they were [agency]-issued computers?
>
> A Yes, sir, they were agency-issued laptops, not desktop computers. We had both desktop and laptops and we used the laptops when we went out on the road and we took them also home for home use.
>
> Q Was it your understanding that you could use that laptop for your own personal use?

A I believe so, yes, sir.

Tr. at 199-200. Regardless of whether the individual's understanding was correct, her use of a government computer in performing work for the contractor was clearly contrary to the false assurances she gave her supervisor in seeking his approval for this outside employment.

Similarly, in her memoranda to the ethics counselor, the individual stated that she did "not have any contact with defense contractors," Exhibit H (February 6, 2001 memorandum), and that she did "not have any direct contact with [the contractor] or any other defense contractors in performing my duties as described above." Exhibit K (February 16, 2001 memorandum). In the context of evaluating a potential conflict of interest, the individual's representation is clear: At the time she wrote the memoranda, she had no direct contact with any contractor with regard to her government responsibilities.

Yet, the individual's February 15, 2001, email to the contractor shows that she was discussing the CAR that her agency had issued to the contractor. Upon learning that the contractor had not received a copy of the closed CAR, the individual advised that the contractor's program manager should ask for a copy from the agency field office engineer, and that if "he doesn't provide you a copy by the time I get there, I'll see what I can do to expedite it." Exhibit I.

Thus, the individual clearly *did* have contact with the contractor regarding a matter before her agency, and offered to use what influence she had to "expedite" its processing. Given this, and her representations to the ethics counselor to the contrary, it is not surprising that, in this email, after her statement of advice and before her offer to "expedite," is found the individual's statement, "I should keep as low a profile on this as possible." *Id.*

The individual contends that this statement was simply meant to tell the contractor "not to contact me anymore. It wasn't that I was trying to hide anything." *Id.* at 76-77; *id.* at 107 ("I was trying to, in a cordial way, to try and get him to stop calling and e-mailing me at work."). If this was, in fact, the individual's true intent, she could have simply stated this directly. Instead, the use of the term "low profile" in the context that it appears raises serious questions as to the individual's intent, and I do not find that her present explanation of the statement resolves these questions.

The Adjudicative Guidelines set forth four conditions that could mitigate concerns arising from allegations of criminal conduct, three of which are potentially applicable in this case: (1) evidence that the person did not commit the offense; (2) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (3) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement. *Adjudicative Guidelines* at ¶ 32.[5]

First, aside from the individual's testimony, there is scant evidence in the record that she did not commit the offense with which she was charged. Moreover, as discussed above, the individual's

[5] The other mitigating factor, that "the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life," *id.* at ¶ 32(b), is clearly not applicable to this case.

testimony was not credible in attempting to explain her statements as they appear in contemporaneous records. At best, the evidence indicates that the individual exercised extremely poor judgment in her actions regarding her outside employment in February 2001. Even more concerning is evidence that she provided false information to both her supervisor and the ethics counselor in seeking approval for that employment.

Over twelve years have passed since those events, and there is no evidence in the record of any behavior that would raise any further concern, save for the two cell phone incidents discussed above. In addition, there was testimony at the hearing that supports a finding that, both before and after the events of 2001, the individual has a good employment record. Tr. at 126-56.

These mitigating factors, particularly the considerable passage of time, might have been sufficient to resolve the concerns in this case had I found the individual completely forthcoming about her past behavior. Instead, in her testimony, the individual attempted to paint a picture of those events that is significantly at odds with any reasonable reading of the contemporaneous evidence. Even if I were to assume this is not the product of intentional misrepresentation on her part, I could not have confidence that the individual fully understands the gravity of her actions.

It is critical that clearance holders fully understand the rules governing their conduct, are fully forthcoming about that conduct, and exercise good judgment generally. The evidence in the record raises serious concerns as to the individual's reliability and trustworthiness is this regard under Criterion L, and I cannot find that she has sufficiently resolved those concerns.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has resolved the DOE's security concerns under Criteria G, but has not resolved the concerns raised under Criterion L. Therefore, the individual has not demonstrated that granting her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: April 1, 2013