

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’s 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. FINDINGS OF FACT AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of one potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L). Exhibit 1.² Specifically, the LSO cited the individual’s past and present association “with persons engaged in illegal drug use and possession in his presence.” *Id.* The Notification Letter also states that the individual “signed a Security Acknowledgment on November 30, 2011, acknowledging he is aware that any involvement with illegal drugs could result in the loss of his DOE access authorization.” *Id.*

The individual does not dispute the allegations in the Notification Letter, with one exception. The LSO alleged that, as the result of a friendship with an illegal drug user, the individual “allowed illegal drug use and possession in his home on up to four occasions in June 2009.” *Id.* (citing Exhibit 6 at 122-31; Exhibit 7 at 46). In his response to the Notification Letter, the individual stated that “it was not in my home that the drug use and possession occurred, it was [the user]’s. At the time, I was financially unable to pay a deposit on an apartment, and I stayed at his home for about two months.” Exhibit 2 at 2.

Because the information cited to support this allegation was provided by the individual himself in

² Criterion L defines as derogatory information indicating 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).

Personnel Security Interviews (PSIs), and the cited portions of the PSIs are consistent with the individual's response to this allegation, I find the statement in his response to be credible. *See* Exhibit 7 at 46 (March 23, 2012 PSI at 46) ("I didn't really have my own place"); Exhibit 6 at 127 (July 13, 2012 PSI). Aside from this, I find that the allegations in the Notification Letter are supported by the evidence in the record, and are therefore valid. *See* 10 C.F.R. § 710.27(c) (requiring that Hearing Officer "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter).

I further find that the allegations in the Notification Letter adequately justify the DOE's invocation of Criterion L, and raise valid security concerns. Any association with persons involved in criminal activity can create a vulnerability to exploitation, manipulation, or duress, such that it raises questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at ¶ 16(g).

IV. ANALYSIS

The *Adjudicative Guidelines* provide that security concerns arising from association with persons involved in criminal activity can be mitigated where "association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations." *Id.* at ¶ 17(f); *see also id.* at ¶ 17(e) ("the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress").

The Notification Letter references twelve individuals who have used illegal drugs and with whom the individual has been associated at various times since 1998. Exhibit 1 at ¶ B (since 2011), ¶ C (2010 to January 2012), ¶ D (2010 to January 2012), ¶ E (1998 to October 2011), ¶ F (December 2008 to July 2009), ¶ G (June 2009), ¶ H (2002 or 2003 to 2008), ¶ I (May 2003 to 2007), ¶ J (May 2003 to May 2005), ¶ K (2001 to 2002); ¶ L (2000 to 2001 or 2002); ¶ M (2001). The individual, whose statements in PSIs were the source of all of these allegations, testified credibly that he no longer has contact with all but three of these individuals. Tr. at 50-52; *see also* Exhibit 2 (individual's response to Notification Letter).

Of those three, two testified at the hearing in this matter, one provided a written statement, and all three submitted recent drugs tests, the results of which were negative. Exhibits A through D. One friend testified that he had not used illegal drugs "since the early part of 2011, maybe late 2010." Tr. at 44. He explained that he "recently got married in September. I made a promise to myself before I asked her and before we had kids or anything to completely stay away from any sort of drugs." *Id.* In the written statement, another friend of the individual acknowledged his prior use of marijuana, but stated that he no longer uses it. "I am now in an administrative position for a quickly growing company that offers me the employment that I desire and a drug-free lifestyle which I thoroughly enjoy. . . . I have no desire to use marijuana ever again." Exhibit E.

The individual's girlfriend testified that she began dating the individual two years ago, at which time she used marijuana occasionally, though she never smoked in the presence of the individual. Tr. at 13-14. She stated that, after the individual's March 2012 PSI, he informed her that "he couldn't even associate with me if he knew that I used illegal substances." *Id.* at 14. She testified that he asked

her to not use marijuana, and she had no problem with that. “It was more of a situational thing anyway. It had to do with the person I was living with at the time.” *Id.* at 14-15; *see also* Exhibit A (girlfriend’s negative drug test taken on April 4, 2013). In addition, the individual’s girlfriend confirmed that the individual “[a]bsolutely” does not associate with people who use illegal drugs. *Id.* at 13.

Finally, the statements of the individual in his March 2012 PSI indicate that he was surprised to learn that the term “involvement with any illegal drug” in the Security Acknowledgment that he signed in November 2011 was meant to include the use of illegal drugs by those with whom the individual associated. Exhibit 7 at 51. He testified at the hearing that “it hadn't entered my mind that my involvement included whether or not people I knew were involved,” and that he did not recall anyone explaining this to him prior to the March 2012 PSI. Tr. at 56-57. The individual’s testimony as to his understanding is credible, particularly given that the form in question does not explain or define what is meant by “involvement” with illegal drugs. Exhibit 4. Equally credible is the individual’s testimony as to his current understanding that “I am not permitted to associate with persons who are involved with illegal activity of any kind, and this is to include their use of marijuana or other illegal drugs.” *Id.* at 62.

V. CONCLUSION

The record in this case clearly supports a finding that the individual no longer associates with persons who use illegal drugs or engage in any other illegal activity. Nor is there any basis in the record for a concern that the individual will have such associations in the future. As such, I find that the individual had amply resolved the DOE’s security concerns under Criterion L. Therefore, the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should grant the individual a security clearance. 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: May 22, 2013