



LSO informed the Individual of its determination in a March 2013 letter (Notification Letter). The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer to present evidence to resolve these doubts. Ex. 3. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director appointed me as the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding. The Individual introduced three exhibits and presented the testimony of five witnesses in addition to her own testimony.

## **II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS**

The Part 710 regulations require that I “make specific findings based upon the record as to the validity of each of the allegations” in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites paragraph (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion L). Ex. 1.<sup>2</sup> The Individual does not dispute the factual accuracy of the Criterion L derogatory information described in the Notification Letter. I set forth my factual findings below.

In February 2011, as part of the reinvestigation process, the Individual signed a DOE Security Acknowledgement form (Security Form). Ex. 7 at 12. The Security Form stated that the Individual understood that she was to directly report to the DOE within five working days all “arrests, charges (including charges that are dismissed), or detentions by Federal, State, or other law enforcement authorities, for any violation of any Federal law, State law, county or municipal law, regulation or ordinance, other than traffic violations for which a fine of \$250 or less was imposed . . . .” Ex. 7 at 12.

In July 2011, the Individual was cited for speeding 20 miles per hour over the speed limit, failing to notify the appropriate State agency that her address, as listed on her driver’s license, had changed, and for failure to maintain liability insurance on her automobile. Ex. 4. The Individual later failed to appear in court for an August 2011 arraignment regarding these citations and the judge issued a Bench Warrant for her arrest. Ex. 4 at 3.

The Individual was involved in an automobile accident in November 2011. A local police officer came to investigate the accident and discovered that the Individual had a pending arrest warrant. The officer then took the Individual into custody. Ex. 8 at 6. The Individual paid a bond and was released.

On December 1, 2011, the LSO was notified that the Individual had been arrested because of a bench warrant for failure to appear in court for a Driving Under the Influence Citation. Ex. 3 at 2. (Despite this report, the Individual, as recounted above, had, in fact, been arrested, not for DUI, but for Speeding. *See* Ex. A.) The Individual did not notify the LSO of her arrest until the middle of January 2012. Ex. 8 at 9.

Later in December 2011, local police officers came to the Individual’s residence as part of a police “Knock and Talk” program. Tr. at 36. At that time, the Individual was present in the residence along

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<sup>2</sup> Criterion L refers to information indicating that an 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).

with the Individual's son's girlfriend (Girlfriend). One officer asked if he could come into the Individual's residence and the Individual agreed. Ex. 8 at 24-25. While searching, the officers found a small container with Lortab (hydrocodone<sup>3</sup> and acetaminophen) tablets on the Individual's coffee table. Ex. 8 at 26; Tr. at 40. The officers also discovered that the Girlfriend also possessed five Lortab tablets and was attempting to hide them. Ex. 12 at 3. Because the Individual had a prescription for Loratab tablets the officers issued the Lortab Container Citation to the Individual. The Girlfriend was also given a citation for Possession of a Controlled Substance, 3<sup>rd</sup> Degree. Tr. at 41; Ex. 12.

In his contemporaneous report as to the Lortab Container Citation, the citing officer recorded that the Girlfriend possessed five Lortab tablets and that the Individual did not have her prescribed Lortab tablets in a proper prescription container. The officer also reported that the Girlfriend attempted to hide her Lortab tablets. When the Girlfriend was confronted by the officer, she told him that the Individual had given her the Lortab tablets to give to her boyfriend (the Individual's son) because the Individual had borrowed Lortab tablets from him earlier in the week. Ex. 12. The officer reported that the Individual had "confirmed the story that [the Girlfriend] gave me." Ex. 12.

In January 2012, the Individual reported to the LSO that she had been arrested in July 2011, at the scene of the accident. Ex. 8 at 9. On January 26, 2012, the LSO conducted a PSI with the Individual (January 26, 2012, PSI). Ex. 8. The Individual described the events recounted above regarding her November 2011 arrest and stated that she understood that she needed to report all arrests and traffic violations resulting in a fine of \$300 or more.<sup>4</sup> Ex. 8 at 27-28. Nonetheless, the Individual did not disclose during the interview that she had received the Lortab Container Citation in December 2011.

The Individual was asked in March 2012, to complete Part 2 of a Questionnaire for National Security Positions (QNSP) (March 2012 QNSP) to supplement the full QNSP she completed earlier in May 2011 (May 2011 QNSP). Ex. 7. One of the questions on the QNSP asked whether the Individual had "been issued a summons, citation or ticket to appear in court in a criminal proceeding against you; are you on trial or awaiting a trial on criminal charges; or are you currently awaiting sentencing for a criminal offense?" and whether the Individual had "been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?" Ex. 7 at 19 (Question 22a and 22b). In response to these questions, the Individual reported her July 2011 speeding and insurance citations and her failure to appear at a scheduled hearing concerning those citations. Ex. 7 at 19.

The LSO conducted two PSIs with the Individual on July 19, 2012 (July 19, 2012, PSIs). During the first July 19, 2012 PSI, the Individual, when asked about whether she had been "involv[ed]" with law enforcement on any other occasion other than with her arrest in November 2011, responded "No." Ex. 9 at 20 (First PSI). Later, when asked if the local police had ever appeared at her residence, the Individual recounted the circumstances of the Lortab Container Citation. The Individual stated that local police officers knocked at the door and asked if they could search her residence. The Individual, who was in another room dressing, gave the officers permission to search. Ex. 9 at 21. The Individual stated that when the police officers came inside her residence they found several Lortab tablets "laid out" on a table. Ex. 9 at 21. She also stated that she was given a "ticket" for not having prescription

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<sup>3</sup> Hydrocodone is a semi-synthetic opioid narcotic derived from codeine.

<sup>4</sup> The interviewer informed the Individual that it was her responsibility to report all "arrest[s], [and] traffic violations resulting in a fine of \$300.00 hundred dollars or more, bankruptcies, repossessions, garnishments, liens, name changes and changes in citizenship and hospitalization or other treatment for mental illness, drug or alcohol abuse." Ex. 8 at 27-28.

medication in its original container. Ex. 9 at 21. The Individual stated that the Girlfriend was present at her residence at the time of the Lortab Container Citation and that police found her in the bathroom after she had placed several Lortab tablets in the toilet. Ex. 9 at 23. The Individual stated that the Girlfriend then told police that the Individual had given her the Lortab tablets to repay the Individual's son for an earlier occasion when the Individual had borrowed several Lortab tablets from him. Ex. 9 at 25-26. The Individual denied giving the Girlfriend the Lortab tablets and went on to state that while she had previously borrowed the Lortab tablets from her son, she had repaid her son the tablets several weeks earlier. Ex. 9 at 25-26.

During the first July 19, 2012, PSI, the Individual was also asked why she had not previously reported this incident to the LSO during the January 19, 2012, PSI. Ex. 9 at 26. The Individual stated she knew that she was required to go to court to resolve the Lortab Container Citation but at the time of the January 19, 2012, PSI she did recall that citation. Ex. 9 at 26. Further, the Individual stated even if she had recalled the incident, she did not believe that she was required to report it to the LSO since the fine was less than \$300. Ex. 9 at 26-27.

In September 2012, the Individual underwent a forensic psychological examination by the DOE Psychologist. Ex. 11. In his September 2011 report (Report), the DOE Psychologist noted that the Individual had been diagnosed with chronic persistent pain caused by fibromyalgia and chronic back problems which requiring the use of narcotic medications. Ex. 11 at 3. The DOE Psychologist noted that the Individual's account of events regarding her recent legal difficulties was vague or incomplete. Ex. 11 at 9. Further, the Individual informed the DOE Psychologist that she had never obtained prescription medications from any other source other than her pharmacy. Ex. 11 at 3. This is in contrast to the information she gave to the police regarding the Lortab Container Citation incident. The DOE Psychologist stated in the Report that his examination of the Individual had raised basic questions of honesty and reliability that prevented him from making a determination whether she had a mental illness or was abusing drugs or alcohol. Ex. 11 at 5.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise 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 issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines), Guideline E.* As indicated above, the Individual failed to notify the LSO regarding two reportable incidents concerning arrests or citations. Consequently, I find that the LSO had sufficient grounds to invoke Criterion L.

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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). In considering

these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

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).

#### IV. ANALYSIS

At the hearing, when asked why she did not report her November 2011 arrest to the LSO until January 2012, the Individual stated that tickets did not have to be reported unless the fine was over \$300. Tr. at 52. When she appeared in court in early December 2011, she was assessed a \$499 fine. Tr. at 53. She paid the associated \$499 fine to the court in January 2012, she then reported the arrest and ticket. Tr. at 53; Ex. A, B. While the Individual’s belief that she did not have to report the November custodial arrest is sincere, based upon my assessment of her testimony, it is simply not reasonable given specific reporting requirement outlined in the Security Form. The exception the Individual relies on to excuse her failure to report in a timely manner applies only to “*traffic violations* for which a fine of \$250 or less was imposed.” More importantly, the fact remains that the Individual was placed under custodial arrest in November 2011, which is a reportable incident. While the Individual did eventually report the arrest, her report was made some two months after the fact and cannot be considered timely for purposes of the five-working-day deadline outlined in the Security Form. Further, even if I were to accept the Individual’s interpretation of the reporting requirements, the fact remains that the Individual admitted during in her testimony that she, in fact, knew the amount of the fine in early December 2011, yet still did not report the arrest until January 2012. Tr. at 53-54.

As for her failure to report the Lortab Container Citation during the January 29, 2012, PSI, the Individual testified that she believed that the Lortab Container Citation was not a drug or alcohol offense (it was a citation for failure to have prescription medicine in its proper container) and that she did not have to report any citation where the fine was \$300 or less.<sup>5</sup> Tr. at 42, 50, 63, 76-77. It is apparent that he Individual did not report the Lortab Container Citation within the five-day deadline. Because the Lortab Container Citation was not a traffic offense, it too would not fit under the traffic violation exception as outlined in the Security Form.<sup>6</sup>

With regard to the Individual’s failure to report the Lortab Container Citation in the March 2012, QNSP, the Individual was specifically asked to report whether she had “ever been charged with any offense related to alcohol or drugs” or “[i]n the past 7 years, have you been involved in the

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<sup>5</sup> The Individual testified that as a result of the Lortab Container Citation she was fined \$235 and paid the fine in April 2012. Tr. at 40-41.

<sup>6</sup> It is possible that the Individual may have been confused as to whether the Lortab Container Citation was a reportable event after the January 29, 2012, PSI. The interviewer in the January 29, 2012, PSI informed the Individual that “[i]t is your responsibility to report “all arrest[s], traffic violations resulting in a fine of \$300.00 hundred dollars or more . . . .” Ex. 8 at 27-28. However, the Individual’s duty to report the Lortab Container Citation arose a month before that PSI.

illegal possession, purchase, manufacture, trafficking, production, transfer, shipping, receiving, handling, of any controlled substance?” Ex. 7 at 19 (questions 22(e) and 23(c), respectively). The Individual testified that because she was legitimately prescribed the Lortab tablets she properly answered “No” to both questions. Tr. at 50. I find that because of the wording of the questions and the unique nature of the Individual’s offense, the Individual’s answers were not meant to mislead the LSO. Since the Lortab Container Citation concerns the placement of her legitimately prescribed narcotic medication (and not an illegally procured or proscribed drug), I find that the Individual did, in fact, plausibly believe that her “No” answer on Question 22(e) was correct. With regard to question 23(c), the Individual’s Lortab Container Citation, at best, might relate to “handling” of a controlled substance. However, it is uncertain whether a lay person would identify a failure to store a legitimately prescribed narcotic in the original pharmacy container as an offense regarding the “handling” of a controlled substance. In this regard, I found the Individual’s testimony convincing that she did not intend to mislead the LSO with her answer to Question 23(c).

The Criterion L concerns raised by the Individual’s failure to follow reporting requirements are also raised by the Individual’s somewhat inconsistent recounting of the facts surrounding the Lortab Container Citation as recorded by the officer issuing the Lortab Container Citation and the DOE Psychologist. According to the summary contained in the citing officer’s report, after the Girlfriend informed him that the Individual had given her the Lortab tablets, the Individual confirmed the Girlfriend’s story. Ex. 12 at 3. Nonetheless, at the hearing, the Individual reiterated the account given in the first July 19, 2012, PSI: that the Girlfriend took the Lortab tablets mistakenly thinking that the Individual had laid out the tablets to repay the Individual’s son and that she informed the police officer of that fact. Tr. at 36-40. In the DOE Psychologist’s report, the Individual stated she had never obtained prescription medication from a source other than a pharmacy, yet the Individual has, on a number of occasions, reported that she once had borrowed Lortab tablets from her son. While neither the police officer nor the DOE Psychologist was available to testify, the Individual’s account, without additional evidence, is insufficient to resolve these discrepancies. While this inconsistent reporting may be due to the Individual’s admitted problems with memory resulting from her fibromyalgia, this inconsistent reporting raises questions about the Individual’s ability to accurately report past events. Ex. 9 at 26.

The testimony of the Individual’s supervisor and co-worker indicates that the Individual is an extremely hard worker and is honest, reliable, and trustworthy. Tr. at 14-17, 25-27. However, this evidence is outweighed by the Individual’s documented failures to comply with security reporting requirements. Further, I cannot find that any of the potentially relevant mitigating factors listed under Guideline E of the *Adjudicative Guidelines* are applicable in this case. The Individual did not make a prompt, good faith effort to report the incidents, the failure to report was not due to legal counsel’s advice, and the incidents themselves cannot be considered minor. *See Adjudicative Guidelines*, Guideline E ¶ 17(a)-(c). After reviewing the testimony presented at the hearing along with the evidence in the record, I find that the Individual, at this time, has not resolved the Criterion L concerns raised by her failures to report incidents to the LSO.

## V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the DOE's security concerns 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 an access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: August 30, 2013