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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: September 25, 2015 ) Case No.: PSH-15-0073  
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Issued: December 21, 2015

**Administrative Judge Decision**

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (“the Individual”) to hold an access authorization<sup>1</sup> under the 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.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should not restore the Individual’s access authorization.

**I. Background**

The Individual is an employee of a DOE contractor in a position that requires that he hold a DOE security clearance. A Local Security Office (LSO) obtained information that raised security concerns. In order to address those concerns, the LSO summoned the Individual for an interview with a personnel security specialist in April 2015. Because the Personnel Security Interview (PSI) did not resolve these concerns, 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 in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. 710.21.

On September 18, 2015, the Individual exercised his right under the Part 710 regulations to request an administrative hearing. The LSO forwarded this request to the Office of Hearings and Appeals

<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an Individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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(OHA), and the OHA Director appointed me the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25 (e) and (g), the DOE introduced six exhibits (DOE Exs. 1-6) into the record. The Individual presented the testimony of six witnesses, including his own testimony. See Transcript of Hearing, Case No. PSH-15-0073 (Tr.).

## **II. Regulatory Standard**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that, in these proceedings, an Administrative Judge 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 or unfavorable, that has a bearing on the question of whether granting or restoring 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. Notification Letter 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).<sup>2</sup> DOE Ex. 1. In support of its Notification Letter, the LSO cited that the Individual admitted that from March 2014 to July 2014, he accessed, viewed, and saved inappropriate images of a sexual nature on his government computer. DOE Ex. 1 at 3. He also admitted that he knew he was not permitted to view inappropriate websites on his government computer. *Id.*

The Individual does not dispute any of these claims. I find that the allegations are valid and well supported by the record in this case. See 10 C.F.R. § 710.27(c) (requiring Administrative Judge to

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<sup>2</sup> Criterion L refers to information indicating that the Individual has “engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

“make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter”). I further find that this information regarding the Individual’s accessing inappropriate images on his government computer adequately justifies the DOE’s invocation of Criterion L, as it raises significant security concerns because noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline M.*

#### **IV. Findings of Fact**

The facts of this case are essentially undisputed. Between March 2014 and July 2014, the Individual accessed and saved inappropriate images on his government computer, in an attempt to find unfitting pictures of his wife. DOE Ex. 6 at 15; Tr. at 97. These pictures of his wife were taken over 14 years previously and were lost when the camera was stolen. Tr. at 21, 97. While he did not find pictures of his wife, the Individual admitted that he accessed other inappropriate images of a sexual nature and that he knew he was not permitted to use his government computer to do so. DOE Ex. 6 at 32.

#### **V. Administrative Judge’s Analysis**

The Adjudicative Guidelines state that “noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.” Adjudicative Guideline M at ¶ 39. In all his statements to DOE officials, the Individual repeated the same explanation, that he had been searching for 14-year-old pictures of his wife, that a friend had informed him were on the Internet at least two years prior to 2014.

Under the Adjudicative Guidelines, mitigation of the security concern could occur if:

- (a) so much time has elapsed since the 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;
- (b) the misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available;
- (c) the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

Adjudicative Guidelines M at ¶ 41. The Individual and his wife testified that at the time he accessed the pictures, he was under extreme stress. Tr. at 21, 85-87, 91. The Individual was performing major repairs on their home after their son flooded it; in addition, the Individual was taking difficult college courses, including Matrix Algebra; and he was working full-time. Tr. at 21, 85-87.

The Employee Assistance Program Counselor testified on the Individual's behalf. She stated that the Individual's extreme stress level could have led to his behavior of searching for inappropriate pictures on his government computer. Tr. at 66-67. She also opined that he has learned a valuable lesson and he has the tools to avoid such behavior in the future. Tr. at 69. She concluded that his risk of engaging in such behavior again is low. Tr. at 70.

In reviewing all the exhibits in this matter, along with the hearing testimony, it is apparent to me that the Individual's account of why he was inappropriately using his government computer has not wavered. DOE Ex. 5; Tr. at 22, 52. However, I find that his explanation is unbelievable. He explained that he was searching for 14-year-old pictures that he had been told two years previous to his search were on the Internet. Tr. at 97; DOE Ex. 4 at 2; DOE Ex. 5 at 15; DOE Ex. 6 at 12. Although he located no pictures of his wife, he continued to visit prohibited websites on his government computer over a four-month period. Also making his claim unbelievable were that some of the over 200 pictures found on his computer were of sexual acts between adults. DOE Ex. 5 at 15.

The Individual has not shown that any of the factors that could mitigate the concern have been met. His behavior occurred in 2014, only 14 months prior to the Notification Letter's issuance. The misuse was not minor and occurred over the space of several months. Finally, the conduct was not unintentional or inadvertent; nor can I be persuaded that the damage to his home and the difficulty of his college courses significantly justify his misconduct. Also, the Individual did not make an effort to correct the situation, nor notify his supervisor, prior to the violation being found by the computer experts.

Accordingly, I find that the Individual has not resolved the security concerns set forth in the Notification Letter regarding his accessing inappropriate pictures on his government computer.

## **Conclusion**

For the reasons set forth above, I find that the Individual has not resolved the security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve all of the security concerns at issue. I therefore cannot find that restoring the Individual access authorization will not endanger the common defense and would be consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals

Date: December 21, 2015