

* 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 15, 2011)
)
) Case No.: PSH-11-0017
)
)
_____)

Issued: February 2, 2012

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This decision concerns the eligibility of XXXX X. XXXXXX (hereinafter referred to as "the Individual") to maintain a security clearance 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." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

This case involves derogatory information developed during the course of a background investigation of the Individual. Unable to resolve the security concerns raised by this derogatory information, a Local Security Office (LSO) initiated administrative review proceedings on October 19, 2011, by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (1).¹

¹ Specifically, the Notification Letter alleges that the Individual has:

- (1) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. 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 Hearing Officer in this matter on November 16, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his Employee Assistance Counselor (the Counselor), and four of his friends and co-workers. *See* Transcript of Hearing, Case No. PSH-11-0017 (hereinafter cited as “Tr.”). The LSO submitted 25 exhibits, marked as Exhibits 1 through 25, and the Individual submitted 13 exhibits, marked as Exhibits A through M.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF FACT

response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to §710.20 through §710.31. 10 C.F.R. § 710.8(f) (Criterion F); and

(2) 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) (Criterion L).

The Individual had held a security clearance since 1982. When he was 17, he began working at a DOE facility which required him to obtain a security clearance. The LSO conducted a background investigation of the Individual which revealed that the Individual had previously used marijuana. The LSO then conducted a Personnel Security Interview (PSI) of the Individual on March 26, 1982.² During this PSI, the Individual admitted using marijuana, but denied purchasing or cultivating it. Exhibit 13 at 1. The LSO provided the Individual with an opportunity to sign a DOE Drug Certification certifying that he would not use or be involved with illegal drugs while in possession of a DOE security clearance. The Individual signed the DOE Drug Certification and was subsequently granted a DOE security clearance. Exhibit 15 at 1.

In March 1986, the Individual was arrested for Driving Under the Influence (of alcohol) (DUI) and Possession of a Controlled Substance (Cocaine). Exhibit 25 at 42. Although he was required to report this arrest to the LSO within 72 hours, he did not do so until 1989. Exhibit 24 at 51-52.

During a background reinvestigation of the Individual, the LSO conducted a PSI of the Individual on July 8, 1992.³ During this PSI, the Individual was asked about the March 1986 arrest for DUI and Possession of a Controlled Substance. The Individual admitted that he had been drinking when he was stopped by the police. The Individual stated that the police searched him and found cocaine in his possession. Exhibit 24 at 27, 37-38. The Individual claimed that, earlier that day, he had found a discarded beer cooler and kept it. *Id.* The Individual claimed that he did not realize that the beer cooler contained hidden cocaine. *Id.* The Individual emphatically stated that the cocaine found in his possession was not his. *Id.* at 38. The Individual repeatedly denied that he had ever used cocaine or any form of illegal drug other than marijuana. *Id.* at 36-37, 48, 55. When the Individual was asked why he did not report the March 1986 arrest in a timely manner, he stated: "I was scared for my job." *Id.* at 51.

On December 24, 1992, the Individual was interviewed by an Office of Personnel Management (OPM) investigator. The investigator's report indicates that the Individual informed the investigator that the cocaine found in his possession in March 1986 was not his. Exhibit 25 at 194. The Individual further claimed that he had not used any form of illegal drugs. *Id.*

On August 20, 2003, the Individual was interviewed by an OPM investigator. During this interview, the Individual informed the investigator that he had used marijuana regularly until 1986. Exhibit 25 at 94-95. The Individual also admitted that he used both methamphetamine and cocaine during this period. *Id.*

On June 7, 2010, the Individual contacted the Counselor seeking assistance in his efforts to

² A written summary of the March 26, 1982, PSI appears in the record as Exhibit 13.

³ A copy of the transcript of the July 8, 1992, PSI appears in the record as Exhibit 24.

discontinue using alcohol. Exhibit 11 at 3. The Counselor evaluated the Individual and recommended that he attend an outpatient treatment program (OPT) for alcohol and substance abuse. The Individual began the OPT in July 2010, and completed the OPT on February 14, 2011. Exhibit 11 at 3; Exhibit 23 at 86.

On May 10, 2011, the Individual reported his participation in the OPT to the LSO for the first time. Exhibit 11 at 1-3. In this report, the Individual explained his failure to report his participation in the OPT in a timely manner by stating that the Counselor had initially advised him that he did not have to report his treatment until his next reinvestigation. *Id.* at 3.

The LSO conducted a PSI of the Individual on May 26, 2011.⁴ During this PSI, the Individual again attributed his delay in reporting his participation in the OPT to the misinformation he received from the Counselor. Exhibit 23 at 87. When the interview asked how he could be confused about his reporting obligations, the Individual responded by stating: "Cause I've never been in this situation before. I guess." *Id.* at 88. The Individual explained that he reported his participation in the OPT the day after the Counselor informed him that she had provided him with inaccurate information concerning his reporting obligations. *Id.* at 90. The Individual admitted that he had used cocaine and methamphetamine from 1981 to 1986. *Id.* at 99-100. The Individual specifically admitted using drugs while holding a DOE Drug Certification. *Id.* at 100, 111-112. The Individual further admitted using mushrooms, valium, and LSD. *Id.* at 101-103. The Individual admitted purchasing marijuana and mushrooms in high school. *Id.* at 107, 116. He specifically admitted using methamphetamine and cocaine while holding a clearance. *Id.* at 119, 131. He also admitted that he grew marijuana when he was 15 or 16. *Id.* at 150.

IV. ANALYSIS

A. Criterion F

The evidence discussed above indicates that the Individual repeatedly and intentionally provided false or misleading information about his illegal drug use in his PSIs, and OPM interviews, over at least a 29-year period. The Individual intentionally provided this false information to government security officials in order to conceal his illegal drug use and involvement from the LSO for the express purpose of maintaining his security clearance. The Individual's deliberate failure to provide accurate information in his PSIs and OPM interviews, raises doubts under Criterion F about his candor, honesty, and willingness to comply with rules. "Conduct involving . . . 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." *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) (Revised Guidelines), Guideline E at ¶ 15.*

⁴ A copy of the transcript of the May 26, 2011, PSI appears in the record as Exhibit 23.

At the hearing, the Individual asserted that after receiving treatment and counseling for substance abuse he: (1) has candidly self-reported the full extent of his illegal drug use and intentional provision of false information to the LSO, (2) has become a more honest, wise, responsible, and mature person, (3) fully intends to remain completely honest with the LSO, and (4) is now facing his fears “head-on.”

At the hearing, the Individual initially admitted that he had purchased and used cocaine, marijuana, methamphetamines, hashish, mushrooms, and Valium without a prescription while he held a security clearance. Tr. at 67, 80-81. Later in the hearing, he claimed that the only drugs he had used illegally while holding a security clearance were cocaine, marijuana, and methamphetamines. *Id.* at 102. He further testified that his last use of an illegal drug occurred in 1986. *Id.* at 67, 81. The Individual admitted that he had delayed reporting his March 1986 arrest to the LSO because of his concern that it would affect his security clearance. *Id.* at 71. The Individual testified that he was lying when he informed the LSO that he had never purchased or cultivated marijuana. *Id.* at 73, 103. The Individual also testified that he owned the cocaine found in his possession during the March 1986 arrest. *Id.* at 102. The Individual admitted that he had lied during his PSI in 1982, when he informed the LSO that his use of illegal drugs had been limited to marijuana. *Id.* at 104. The Individual also admitted that he had concealed the extent of his illegal drug use and intentional falsifications through five investigations, while holding a security clearance for 29 years. *Id.* at 99, 102-106.

The Individual testified that in the past he had been “young,” “immature,” “self-centered,” irresponsible and “not informed about repenting.” *Id.* at 72. The Individual now describes himself as: “a child of God,” “more responsible,” career-oriented, “more mature,” more serious about security, and trustworthy. *Id.* at 71, 75, 96-98. The Individual testified that this change had come after he had hit bottom and realized that he had to change his life. *Id.* at 108. The Individual further explained that disclosing his past illegal drug use and provision of false information to the LSO were required by the twelve-step program he was working. *Id.* at 82.

Turning to the present case, I note that the Individual self-reported his falsifications and illegal drug use. This factor weighs in his favor. However, the record also shows that the Individual provided the LSO with false or misleading information during five investigations over a period of 29 years, thereby establishing a strong and continuing pattern of falsification. In addition, the Individual concealed the full extent of his illegal drug use and provision of false or misleading information until relatively recently, in May 2011. These factors weigh heavily against a finding that the Individual has mitigated the security concerns raised by his provision of false or misleading information to the LSO.

Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing*, Case No. TSO-0568 (2008),⁵ and cases cited therein. In most cases in which

⁵ 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

hearing officers have concluded that doubts about an individual's judgment and reliability raised by evidence of falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the individuals have exhibited a sustained pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, hearing officers have generally determined that the individual was not eligible to hold an access authorization. *See Id.* In the present case, because of the recency of the disclosures, the Individual has not established a significant pattern of responsible behavior.

The Individual did not reveal the full extent of his illegal drug use until the May 26, 2011, PSI. Accordingly, the Individual had not yet established even a year-long pattern of responsible behavior at the time of the hearing. As the cases cited above indicate, a year-long pattern of responsible behavior would be insufficient to mitigate a 29-year period of deception.

While the evidence submitted by the Individual in order to mitigate this 29-year pattern of deception by the Individual shows that the Individual has become a more forthright and dependable person, it cannot resolve the serious security concerns raised by his repeated provision of false information to DOE security officials. Accordingly, the security concerns associated with the Individual's falsifications remain unresolved.

B. Criterion L

In addition to reciting concerns about the Individual's honesty, trustworthiness and reliability raised by the Individual's lack of candor, discussed above in my analysis of Criterion F, the LSO cites two other security concerns under Criterion L. Specifically, the LSO cites the Individual's delay in reporting his alcohol and substance abuse treatment and his many violations of his DOE Drug Certification as derogatory information which creates security concerns under Criterion L.

The Individual was obligated to report his outpatient treatment for alcohol and substance abuse to the LSO, within five days of its commencement, in July 2010. However, the Individual did not report that he was receiving this treatment to the LSO until May 10, 2011. At the hearing, the Individual testified that he asked the Counselor whether he had to report his alcohol and substance abuse treatment to the LSO. He was informed by the Counselor that he would not have to report his alcohol and substance abuse treatment to the LSO until his next re-investigation. Tr. at 83-84. This account was corroborated by the Counselor's testimony. Tr. at 16-17. When the Counselor informed the Individual that her earlier advice to him was inaccurate, he promptly informed the LSO of his alcohol and substance abuse treatment. Tr. at 17-18.

I am convinced that the Individual's most recent delay in reporting derogatory information to the LSO was a result of the Individual's reliance upon the inaccurate advice of his Counselor. The Counselor, a professional employed by the Individual's Employee Assistance Program, was in a position of authority in relation to the Individual, who reasonably relied upon her advice. These circumstances mitigate the security concerns arising under Criterion L from the Individual's

delay in reporting his alcohol and substance abuse treatment to the LSO.

The Individual's frequent illegal drug use, during the period 1982 through 1986, violated the Drug Certification he signed on March 26, 1982. By signing this Drug Certification, the Individual promised that he would not use illegal drugs while he maintained a DOE security clearance. The Individual's failure to honor his Drug Certification raises important security concerns. *See Adjudicative Guidelines* at ¶16(f). When the Individual used illegal drugs, he violated the promise he made when he signed the DOE Drug Certification. The DOE security program is based on trust. If an employee breaks a written promise to the DOE, that trust is violated. It was precisely because of the Individual's prior illegal drug use that he was asked in 1982 to sign a Drug Certification, promising that he would never again use illegal drugs while employed in a position requiring a security clearance. He clearly repeatedly violated this promise when he repeatedly used illegal drugs from 1982 through 1986. Accordingly, the LSO properly invoked Criterion L in this case.

The Individual was 17 years old when he signed the Drug Certification. He may well have lacked the experience and maturity, at that time, to fully understand the significance of the commitment he was making. However, the Individual continued to violate this promise for the next four years. If I am to believe the Individual, a significant amount of time, 26 years, has passed since the last known violation of his Drug Certification. However, during this time, the Individual had been concealing his illegal drug use and falsifications from DOE. I am, therefore, unable to rely upon the Individual's assertion that his last violation of his Drug Certification occurred in 1986.

The totality of the evidence in this case leads me to find that the Individual has not resolved the security concerns raised by the LSO under Criterion L arising from the Individual's violation of his Drug Certification.

V. CONCLUSION

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criteria F and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: February 2, 2012