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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 1, 2011) Case No.: TSO-1104
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Issued: December 1, 2011

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 individual’s security clearance should not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. During the process of applying for a higher-level security clearance, the individual provided information to the DOE that is inconsistent with

¹An 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 also be referred to in this Decision as a security clearance.

²Decisions 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>.

information that he previously provided. Because these inconsistencies raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in March 2011. After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (hereinafter referred to as “the DOE psychiatrist”) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report setting forth the results of that evaluation, and sent it to the LSO. After reviewing this report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 14 exhibits into the record of this proceeding. The individual introduced one exhibit and presented the testimony of six witnesses, in addition to testifying himself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual’s Inconsistent Representations To The DOE

The following facts are undisputed. In December 2009, the individual completed a Questionnaire For National Security Positions (QNSP) in which he indicated that he last used marijuana in December 2007, and that he had never used any other illegal drugs. In response to the DOE’s January 2010 Letter Of Interrogatory (LOI), the individual indicated that the last time that he used marijuana was in August 2007, and that he had never used any other illegal drugs.

However, in the process of applying for an upgraded security clearance, the individual completed another QNSP in February 2011, in which he indicated that he had used marijuana as recently as June 2009, that he had also used cocaine three times, with the last usage occurring in June 2009, and that he used “ecstasy” (3,4-methylenedioxymethamphetamine (MDMA)) once in 2005. During the ensuing PSI and psychiatric evaluation, the individual confirmed that his last usage of marijuana occurred in June 2009, that he used cocaine twice, with the last usage also occurring in June 2009, and that he used MDMA once in 2005.

B. The Notification Letter and the DOE’s Security Concerns

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (f) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.³

Under criterion (f), information is derogatory if it indicates that the individual has deliberately misrepresented, falsified, or omitted significant information from a QNSP or from written or oral statements made in response to official inquiry on a matter that is relevant to a personnel security determination. 10 C.F.R. § 710.8(f). As support for its application of this criterion, the Letter cites the information set forth above.

This derogatory information adequately justifies the DOE's invocation of criterion (f), and raises significant security concerns. Conduct involving lack of candor or dishonesty raises questions about an individual's reliability and trustworthiness. Of special concern is any failure to provide truthful and candid answers during the security clearance process. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline E.*

III. 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 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).

³ The LSO determined that its security concerns under criteria (j) and (k) about the individual's usage of alcohol and illegal drugs had been mitigated. It based this finding on the DOE psychiatrist's conclusion that the individual did not suffer from a diagnosable substance abuse disorder, on the fact that the individual's last demonstrated usage of illegal drugs occurred approximately two years previously, and on the individual's commitment that he would not use illegal drugs in the future. DOE Ex. 3 at 1-2.

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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. 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. FINDINGS OF FACT AND ANALYSIS

At the hearing, the individual attempted to demonstrate, through his testimony and that of his manager, four friends, and his ex-girlfriend, that his omissions were due to a poor memory and not to an attempt to deceive the DOE, and that he is an honest person who can be relied upon to safeguard classified information.

The individual testified that after completing the December 2009 QNSP and the January 2010 LOI, he talked to his ex-girlfriend, who told him that he had used cocaine and marijuana in her presence on separate occasions in June 2009. Hearing Transcript (Tr.) at 58. He explained that he had no previous recollection of this cocaine usage, and he attributed this to his heavy consumption of alcohol at the time of the usage. *Id.* This conversation caused him to ask himself whether there were any other usages of illegal drugs that he had failed to disclose to the DOE, and he subsequently remembered that he had also used cocaine and MDMA on the same occasion in 2005. Tr. at 73. He further testified that, to the best of his recollection, these were the only usages of illegal drugs that he had previously failed to report to the DOE. Tr. at 72.

The individual described the circumstances surrounding those usages. The 2005 usage of cocaine and MDMA occurred at the house of a friend’s friend, after “a lot” of drinking. Tr. at 85. The individual testified that he had little recollection of the June 2009 cocaine usage because of the amount of alcohol that he consumed on that occasion. Tr. at 88. The June 2009 marijuana usage occurred while he was “hanging out” with some friends at his ex-girlfriend’s house. Tr. at 86. He said that his alcohol consumption on that occasion was “not nearly as much” as on the day of his 2009 cocaine usage, and that, while he likely was intoxicated, he did not drink so much as to cause him to not remember the events of that day. *Id.* He did not report these usages to the DOE sooner, he said, because he did not realize the importance of doing so, Tr. at 84, and when his girlfriend

reminded him of the 2009 usages, he did not really consider the fact that he had provided inaccurate information to the DOE. Tr. at 74.

The individual further testified that he is an honest person who can be relied upon to adhere to the requirements of DOE security. As support for this contention, he cited an instance in which he inadvertently entered a secure facility with a cell phone, and then immediately reported the violation to his manager. Tr. at 79-80.

The individual's ex-girlfriend also testified. She said that she saw the individual use cocaine and marijuana on separate occasions in June 2009. Regarding her telephone conversation with the individual in early 2010, she said that they were discussing the individual's job and the security clearance process, and that the individual was complaining about the scope of the information that he was required to divulge. Tr. at 94. They discussed the individual's listing of his history of illegal drug usage, and the ex-girlfriend asked the individual what he thought his employer's reaction would be to the individual having previously used marijuana and cocaine. The individual expressed surprise, particularly at her mentioning of cocaine, because, according to the ex-girlfriend, the individual did not believe that he had used cocaine. *Id.* She then described to the individual what she had observed regarding his usage of cocaine in 2009, and that he appeared to be quite drunk at the time. Tr. at 95. The ex-girlfriend testified that his reactions during this conversation seemed sincere, and that she believes that he honestly had no recollection of this cocaine usage. Tr. at 96. Accordingly, she believes that his omission of information regarding that usage from the 2009 QNSP and 2010 LOI was due to a faulty memory, and not to an intent to deceive. Tr. at 98. She further stated that, while the individual drank heavily on the occasion of his June 2009 cocaine usage, he wasn't drinking when she saw him use marijuana that month. Tr. at 102. The ex-girlfriend and the individual's other witnesses all testified that the individual is an honest and reliable person. Tr. at 10, 19, 28, 36, 47, 100.

Despite this testimony, I harbor serious doubts about the individual's candor, honesty and reliability. As an initial matter, I find it difficult to believe that the individual forgot to include, on his December 2009 QNSP, a usage of marijuana that occurred only six months prior to that time. The individual attempted to explain this omission by pointing out that he "had used it so infrequently over the past five years," that he couldn't "remember the exact date when he stopped using it." Tr. at 77. It seems more likely, however, that an isolated usage such as happened here would stand out more in the individual's memory than a single usage that occurred as part of a pattern of extensive drug abuse. In any event, nothing in the individual's explanation adequately explains the individual's certification, on two occasions, that his last usage of illegal drugs occurred in 2007, when in fact, that usage occurred only six months prior to his December 2009 QNSP and the January 2010 LOI.

The individual's testimony that he did not recall his June 2009 cocaine usage because of heavy alcohol consumption is at least partly supported by the testimony of his ex-girlfriend. However, there is no indication in the record that the individual suffered alcoholic blackouts during his June 2009 marijuana usage or his 2005 usage of cocaine and MDMA. Consequently, his claim that the omission of these usages from his 2009 QNSP and his 2010 LOI was due to a faulty memory is completely unsupported by other evidence of record.

For the reasons set forth above, I find that the individual deliberately omitted significant information from his December 2009 QNSP and his January 2010 LOI. This finding, however, does not end my analysis. The *Adjudicative Guidelines* set forth potentially mitigating factors that I must consider in determining whether the individual's clearance should be restored. These factors, and my application of them to the case at hand, are set forth below.

The first factor is whether the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. *Adjudicative Guideline E*. Viewing the evidence in the manner that is most favorable to the individual, he became aware of his omissions in January or February 2010, yet he did not provide the DOE with the full extent of his illegal drug usage until over one year later. Accordingly, this mitigating factor is not supported by the record.

The second factor is whether the omission or concealment was caused by improper or inadequate advice of authorized personnel or legal counsel advising the individual about the security clearance process. *Id.* This factor is not applicable to this case.

The third factor is whether the offense was so minor, or so much time has passed, or the behavior was so infrequent, or happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgement. *Id.* The individual omitted significant information concerning the types of illegal drugs he had used and the dates of his most recent usages of those drugs on two occasions from forms used by the DOE during the process of determining the individual's eligibility for access authorization. The omissions occurred approximately two years ago, and were remedied by the individual approximately 10 months ago. Accordingly, there is insufficient evidence of this mitigating factor.

The fourth factor, that the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to address the stressors, circumstances or factors that caused the behavior, *id.*, is also inapplicable. Although the individual has acknowledged the omissions, he contends that they were inadvertent, and there is no indication in the record that the individual has sought or obtained any kind of counseling.

The fifth factor is whether the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. *Id.* By more fully disclosing his illegal drug usage, the individual has taken steps to reduce or eliminate his vulnerability to duress or manipulation. However, in view of the seriousness, recency and repeated nature of the omissions, I do not believe that this factor is of sufficient mitigating value to warrant restoration of the individual's access authorization.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not successfully addressed the DOE's security concerns under criterion (f). I therefore conclude that he has not demonstrated that restoring his access authorization 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 at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: December 1, 2011