

occasions in 1989, and mushrooms once in either 1989 or 1990, and that she deliberately falsified the answer on her 1994 QSP. On her 2002 QNSP, she indicated that she had not illegally used any controlled substance within seven years. However, in her 2011 PSI she stated that she used marijuana on one occasion in 1999, and that she deliberately falsified the answer on her 2002 QNSP. Enclosure 2, DOE Ex. 1.

In August 2011, the individual requested a hearing (hereinafter “the hearing”) to respond to the concerns raised in the Notification Letter. DOE Ex. 2. On September 2, 2011, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter, I received testimony from thirteen persons. The individual testified and presented the testimony of her supervisor, her relationship counselor, her father, her supervisor, a co-worker, a friend/former co-worker, a friend/former supervisor, two neighbors, a long-time friend, a church friend, and a friend from her van pool. Discussion at the hearing centered on how the individual has demonstrated personal responsibility during her career as a DOE contractor employee and in her personal life, and how her use of illegal drugs since 1990 was limited to a single instance of marijuana use in 1999, when she did not hold a security clearance.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing 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). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security test” for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

III. FINDINGS OF FACT AND ANALYSIS

A. The Individual Has Raised Security Concerns Regarding Falsification

As previously noted, the LSO cites one criterion as the basis for suspending the individual’s security clearance, Criterion F. To support its allegations, the LSO relies on the individual’s falsification of information provided on the 1994 QSP and the 2002 QNSP regarding her illegal drug use, and the individual’s admissions at her 2011 PSI that she deliberately falsified her answers to these questions. I find that the information set forth above constitutes derogatory information that raises questions about the individual’s veracity under Criterion F. The security concerns associated with Criterion F are as follows: “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulation 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." See Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. (Adjudicative Guidelines).

B. The Individual's Contentions at the Hearing

Although the individual acknowledges that she deliberately falsified her responses concerning her past use of illegal drugs on her 1994 QSP and her 2002 QNSP, she contends that she revealed the full extent of past use of illegal drugs at her 2011 PSI, and that she intends to be completely truthful with the DOE in the future. She also states that her use of illegal drugs since 1990 was limited to a single use of marijuana in 1999, that she does not knowingly associate with users of illegal drugs, and that she is regarded as an honest and responsible person by her employers, co-workers, family and friends.

I have carefully considered the record of this proceeding, including the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)¹, the Adjudicative Guidelines and our case law. In this case, I will consider whether the individual came forward voluntarily to renounce her falsifications, the length of time the falsehood was maintained compared to the length of time the individual has been honest, whether there is a pattern of falsifications, the amount of time that has transpired since the individual's admission, and whether the individual was advised regarding the security clearance process. See *Personnel Security Hearing*, Case No. TSO-0668 (2009)², and case cited therein; see also Adjudicative Guidelines, Guideline E ¶ 17(a)-(d). As discussed below, I conclude that the individual's access authorization should not be restored at this time.

1. The Individual's Explanations do not Mitigate her False Responses

During her 2011 PSI, the individual admitted that she began using illegal drugs while in junior high school, and, with the exception of marijuana, stopped experimenting with illegal drugs in about 1990, when she was still in high school. 2011 PSI at 62-67. She stated that her last use of marijuana occurred in 1999 or 2000. *Id.* at 67. In her Request for a Hearing, the individual stated that when she completed her 1994 QSP, she was applying for a summer job with no intention of applying for a permanent position with a DOE contractor. She stated that:

¹ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

² 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 in the search engine located at <http://www.oha.doe.gov/search.htm>.

I believed that admitting to using a controlled substance might lead to an arrest and/or incarceration. I also believed that I would not be accepted for the position if I admitted to illegally using a controlled substance.

Request for Hearing, DOE Exhibit 2. With respect to the falsification of her 2002 QNSP, she stated that she continued to be fearful of an arrest and/or incarceration for admitting to illegal drug use, and that she answered falsely while believing that no one could use the concealed information about her past illegal drug use to force her to violate national security. *Id.*

At the hearing, the individual testified that when she falsely denied illegal drug use on the 1994 QSP, she was afraid that she would be arrested and put in jail for admitting to it. She stated that her similar false denial on the 2002 QNSP was made for the same reason, and to be consistent with her earlier falsification. Hearing Transcript (TR) at 147. She testified that she decided to answer truthfully to questions about her history of using illegal drugs at her 2011 PSI when she was told by the security specialist conducting the interview that the DOE had information that she had possibly used illegal drugs in the past. She stated that she suspected that her ex-husband had revealed information to the DOE, and that this suspicion was confirmed when she read the security background investigation materials provided to her by the DOE. She testified that at the 2011 PSI, she felt relieved that she could now correct her previous falsifications, and that she did not consider making additional false statements at the PSI by continuing to deny her past use of illegal drugs. TR at 161-162

The individual's explanations for deliberately falsifying information on her 1994 QSP and her 2002 QNSP and the circumstances under which she corrected these falsifications do not mitigate the DOE's security concern. First, the individual acknowledges that she deliberately chose to conceal her illegal drug use on these forms because she was concerned about possible criminal prosecution and/or because it could prevent her from being employed by a DOE contractor.³ Second, the individual was confronted by her drug use at the 2011 PSI; she did not come forward voluntarily to renounce her falsification. Third, she maintained her falsehood for seventeen years from June 1994, when she signed the QSP, until June 2011, the date of the PSI. Fourth, there is a pattern of falsification in that she falsified information on both the 1994 QSP and the 2002 QNSP.

Accordingly, I will now consider whether the testimony that she has presented concerning her overall good character and personal responsibility provides a sufficient basis for me to conclude that she can be trusted to provide accurate information to the DOE in the future.

2. The Individual's Evidence Concerning her Trustworthiness

As noted above, the DOE security program is based on trust, and security concerns stemming from an individual's breach of that trust are difficult to resolve. Once such a concern arises, the

³ In choosing to falsify her answers in order to protect herself from possible criminal prosecution, the individual evidently chose to ignore the specific assurance that the DOE attached to these questions, *i.e.*, that information that she revealed in her responses would not be used as evidence in any subsequent criminal proceeding. *See* QNSP question 24, DOE Exhibit 4, and QSP question 25, DOE Exhibit 5.

individual must demonstrate that he/she can now be trusted to be consistently honest and truthful with the DOE. Under OHA precedent, relevant factors include whether the individual came forward voluntarily to admit the falsifications, the length of time since the falsification, how long the falsehood was maintained, whether a pattern of falsification is evident, and the length of time since the individual revealed or corrected the falsification. *See, e.g., Personnel Security Hearing, Case No. TSO-0801 (2009); Personnel Security Hearing, Case No. TSO-0727 (2009).* Ultimately, an individual must convince the Hearing Officer that the individual will be truthful in the future.

Although the length of time since an individual has disclosed the falsification is a relevant factor, that factor is considered together with all relevant factors. Accordingly, the fact that the individual did not correct her falsification until relatively recently (four months prior to the hearing), does not, standing alone, automatically mandate an unfavorable decision. *See, e.g., Personnel Security Hearing, Case No. TSO-0987 (2011)* (individual falsified two DOE forms prior to 1991, voluntarily disclosed the falsifications eight months prior to hearing, and demonstrated a pattern of honesty and responsible behavior over twenty years indicating that the falsifications were lapses in otherwise good judgment that are unlikely to recur in the future); *Personnel Security Hearing, Case No. TSO-0628 (2008)* (individual's voluntary disclosure during a security interview one year prior to hearing that she falsified QNSP 13 years earlier resolved due to passage of time since the falsification, the fact that it was an isolated incident, and the individual's greater maturity and proven honesty and candor). On the other hand, our precedent also makes clear that relatively recent falsifications are difficult to resolve, especially when the individual did not voluntarily disclose the falsification. *See, e.g., Personnel Security Hearing, Case No. TSO-0937 (2010)* (individual who falsified two QNSPs seven years and two years before the hearing, respectively, and lied to an investigator during an official interview two years before the hearing, did not resolve Criterion F concerns because he demonstrated a pattern of falsification spanning seven years, only admitted the falsifications when confronted with the information, and had shown a relatively short period of responsible behavior since the falsifications); *Personnel Security Hearing, Case No. TSO-0688 (2009)* (Criterion F concerns not resolved where individual's voluntary disclosure of falsification on QNSP regarding past drug use was outweighed by the recency of the falsification – three years prior to the hearing – and the short period of time since the individual's admission – eight months prior to the hearing).

In this case, the relevant factors, considered together, do not resolve the Criterion F concern. As discussed above, the two incidents of falsification occurred in 1994 and 2002, more than nine years ago. The testimony presented at the hearing from the individual's supervisor, co-workers, father and friends indicates that in the nine years since the most recent falsification, the individual has conducted herself as an honest and reliable person who takes security seriously in the workplace, and who is considered a trustworthy and honest person by her family and friends. However, while the testimony at the hearing supports the individual's general willingness to abide by security procedures in the workplace, and to conduct herself responsibly in her personal life, this evidence is not sufficient to mitigate the DOE's concerns regarding the individual's willingness to comply with DOE security requirements for reporting personal derogatory information.

As discussed above, there is no indication that the individual would have revealed the 1994 and 2002 falsifications without being told that the DOE had information concerning her illegal drug use. In fact, at the outset of her 2011 PSI, the DOE security specialist asked the individual if she knew, based on the information that she had provided to the DOE and the information collected during her background investigation, why she had been asked to attend the PSI. The individual replied that she did not know. When she was then told that the DOE had information that bore on her eligibility to hold a security clearance, she replied that she was “curious to find out what it is.” 2011 PSI at 7. It is clear to me from these answers that the individual did not intend to reveal any derogatory information to the DOE voluntarily at the 2011 PSI, and that she only acknowledged and discussed her falsifications and other derogatory information at the PSI after the DOE indicated that it possessed specific information from other sources.

At the hearing, the individual testified that she now understands that DOE security questionnaires are not intended to prosecute drug offenses, but to insure that security clearance holders do not have “skeletons in the closet” that could compromise their reliability. She stated that she now has learned how to communicate with DOE security when issues of concern arise. TR at 152. However, in light of the individual’s conduct at the 2011 PSI, I find that the individual has not yet had time to establish that she will reliably abide by DOE security requirements for reporting derogatory information. Therefore, based on the recency of the DOE’s knowledge of the falsifications and the short amount of time the individual has had to demonstrate a subsequent pattern of responsible behavior, I cannot find that the security concerns associated with her falsifications have been mitigated. Accordingly, the security concerns set forth in the Notification Letter under Criterion F regarding the individual’s falsification of information on her 1994 QSP and her 2002 QNSP have not been mitigated.

IV. CONCLUSION

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion F. 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 mitigate the security concerns associated with Criterion F at this time. I therefore cannot find that restoring the individual’s access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual’s access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: December 21, 2011