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August 28, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: April 1, 2003

Case Number: TSO-0029

This decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as "the Individual") to maintain a level "Q" 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." The local Department of Energy Office (the DOE Office) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, the Individual's access authorization should not be restored.

**I. BACKGROUND**

The present proceeding involves an individual who has applied for a DOE Access Authorization. The initial review of the Individual's eligibility for access to classified matter or special nuclear materials conducted by the local DOE security office (the local security office) revealed substantial and significant derogatory information about the Individual. The local security office's review included a background investigation, a Personnel Security Interview (PSI) of the Individual, and an evaluation of the Individual by a DOE consultant Psychiatrist (the Psychiatrist).

Because the Individual was unable to resolve the security concerns raised in the local security office's review, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE Office then issued a letter notifying the Individual that it possessed information which raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter specifies types of derogatory information described in 10 C.F.R. § 710.8(f), (h) and (l).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented three witnesses: the DOE Psychiatrist, the Individual and a DOE Personnel Security Specialist. The Individual presented five witnesses: each of whom works with the Individual and seldom, if ever, has contact with the Individual outside the workplace. The

Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0029 (hereinafter cited as “Tr.”).

## **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 would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: 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 LAW AND FACT**

The Individual was formerly employed as a police officer in a small town in which the Individual had been raised. The Individual's employment with the Police Department in this town began in December 1995, when he was employed as a records clerk and part-time dispatcher. The Individual was then employed as a police officer on a part-time basis. Eventually, the Individual was employed as a police officer on a full-time basis. The Individual's employment as a police officer ended with his resignation in May 2000. During this tenure, the Individual was the subject of numerous complaints by members of the community.

In one instance, the Individual was accused of fondling the breasts and private area of a woman he had arrested. In another instance, an employee of a paint store complained that the Individual had kissed her and fondled her buttocks while she attempted to wait on him at the paint store. The paint shop employee also complained that the Individual had followed her on numerous occasions, called her at her home, and had even stopped her for questioning in order to talk to her. In another instance, a fellow police officer complained after the Individual kicked the door of a bathroom she was using. Tr. at 148. Another woman complained that the Individual, while on patrol, had made inappropriate remarks about her physical attributes and had made an unwanted advance on her. The same woman also complained that, on at least two occasions, the Individual had pulled her over as a pretext to converse with her. Yet another complaint was filed by the inhabitant of an apartment that the Individual visited, ostensibly to investigate an incidence of vandalism. Apparently, while investigating the vandalism incident, the Individual kissed the apartment inhabitant. PSI at 53.

Another complaint was filed by a 16 or 17 year old girl. PSI at 38. During the PSI, the Individual discussed his relationship with this girl: "We became very close. Romantically close . . . We had been romantic a few times." PSI at 38-39. <sup>1/</sup> The Individual claims that he received an e-mail from the girl stating "You know if you want to talk, you know where I'm at." *Id.* The Individual took this as an invitation. One night, at about eleven or twelve o'clock, the Individual went to visit the girl's home. In the PSI he states "So I drove up to her residence, and I knocked on the door, knocked on the door, knocked on the door. Entered the residence." *Id.* The Individual further indicated

I entered, go up to where the T.V. is, where I hear a T.V. on, and she's asleep, or apparently asleep in the bed. I sit down and try to talk to her. I stayed there for a short time to see if she was going to wake up, and she didn't wake up. and I left. I was like, sat on the bed, or laid on the bed next to her, and talked to her, to see if she was going to wake up. And she didn't. I left. And then I heard through the grapevine that she was pissed at me because I had come to the house.

PSI at 40. Apparently, the girl claimed that the Individual had found a spare key and let himself in. On one occasion the Individual claimed that the girl told him where she hid the key. PSI at 40. On another occasion, the Individual claimed that the girl had shown him where she hid the key. PSI at 39. This incident apparently resulted in a complaint to the Police Department. As a result, the Police Department required the Individual to turn in his equipment and placed him on suspension pending a termination investigation. Tr. at 144-46; PSI at 43. As part of this investigation the Individual was required to submit to a fitness for duty evaluation by a clinical psychologist (the Clinical Psychologist). The Clinical Psychologist and the Individual discussed the complaints against the Individual. Tr. at 41. According to the Individual the Clinical Psychologist told him "that it didn't look good for me to maintain employment with [the Police Department]." Tr. at 151-52. In addition, the Individual testified that his union representative advised him that it would be in his best interests to resign. Tr. at 153. The Individual maintains that he was never asked to resign. Tr. at 158. During this investigation, the Individual submitted his resignation from the Police Department.

The Individual subsequently accepted a position with a DOE contractor. The Individual submitted a request for an access authorization. As part of the Individual's background investigation, he was required to complete and submit a DOE security form entitled Questionnaire for Sensitive (or National Security) Positions (QNSP). The Individual submitted a QNSP signed and dated November 16, 2001. Question 21 of this QNSP asked:

In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?

The Individual responded to this question by checking the box labeled no.

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<sup>1/</sup> Apparently, the Individual was 23 or 24 and married to his present spouse when this incident with the girl occurred. PSI at 39.

Question 22 of this QNSP asked:

Has any of the following happened to you in the last 7 years? If 'Yes,' begin with the most recent occurrence and go backward, providing date fired, quit, or left, and other information requested. Use the following codes and explain the reason your employment was ended: 1 - Fired from a job[,] 2 - Quit a job after being told you'd be fired[,] 3 - Left a job by mutual agreement following allegations of misconduct[,] 4 - Left a job by mutual agreement following allegations of unsatisfactory performance[,] 5 - Left a job for other reasons under unfavorable circumstances[.]

The Individual responded to this question by checking the box labeled no.

### **Criterion F**

The Notification Letter alleges that the Individual has “deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in 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).” The Notification Letter alleges that the Individual’s response to Questions 21 and 22 of the QNSP constitute deliberate misrepresentations of significant information.

False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing (Case No. VSO-0013)*, 25 DOE ¶ 82,752 at 85,515 (1995), 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995); *Personnel Security Hearing (Case No. VSO-0281)*, 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000).

The Individual provides the following explanation for his answering Question 21 in the negative:

The [Notification] [L]etter also shows a discrepancy in my answer and the result of the DOE investigation showing that I had sought mental health counseling. I answered the QNSP that I had not sought mental health evaluation. I was ordered by the . . . Police Department to [the Clinical Psychologist] to complete investigation into personnel complaints. I was ordered to report to [the Clinical Psychologist] and he required that I complete a MMPI [Minnesota Multi-phasic Personality Inventory] test and discuss the complaints. After I completed the MMPI test [the Clinical Psychologist] informed me that there were no major concern with the MMPI test results. I did not deliberately misrepresent any information. I was ordered by my employer as part of an investigation to report to [the Clinical Psychologist]. I answered that I had not sought mental health or psychological help on the QNSP

paperwork as I have never requested or sought any mental health evaluations. I was directed by the . . . Police Department to report to [the Clinical Psychologist] as part of an investigation and so that I may retain employment.

Individual's Request for Hearing at 2. Essentially, the Individual contends that he interpreted the phrase "consulted with" which was the phrase used in the QNSP to mean "sought." Such an interpretation is reasonable. One definition of the word "consult" provided in Webster's Ninth Collegiate Dictionary reads: "to ask the advice or opinion of." Accordingly, I find that the local security office has not shown that the Individual has deliberately misrepresented, falsified, or omitted significant information by answering Question 21 in the negative.

In contrast, I am firmly convinced that the Individual deliberately misrepresented, falsified, or omitted significant information by answering Question 22 in the negative. The Individual provides the following explanation for his answering Question 22 in the negative:

The information supplied on the QNSP was accurate per my interpretation of the question. I reported that I had not left employment due to unfavorable circumstances. The official reason of my resignation from the . . . Police Department was for personal reasons. I interpreted the QNSP as official paperwork and gave the official reason for my departure from the . . . Police Department. The DOE investigation shows that there were other circumstances leading to my resignation. I was certain that the DOE investigation would reveal underlying circumstances to my resignation. During my [PSI, I stated] that I had resigned from the . . . Police Department for personal reasons. I do not deny that there were other circumstances leading to my resignation, but officially I left for personal reasons. My interpretation of the QNSP question was the official reason of my resignation. Had I answered that I left for unfavorable circumstances, and the DOE investigation into my employment at the . . . Police Department ended in my resignation for personal reasons, that too would be deliberate misrepresentation, omission or falsification of the circumstances. Either answering that I had not left a job in unfavorable circumstances, or reported that I had, and the DOE investigation determined the opposite, each answer had the potential to be interpreted as a misrepresentation of the facts on my behalf. I believe that my interpretation of the DOE of how the question was to be answered are different. I do not deny any of the information that DOE has in their possession but I did not intentionally misrepresent or falsify my answer to the question.

Individual's Request for Hearing at 2-3. The record shows that after the Individual's former employer had received numerous complaints about the Individual's conduct, it required him to be accompanied by a fellow employee. After the former employer received an additional and particularly disturbing complaint about the Individual, it suspended the Individual while it conducted a fitness for duty investigation. While this fitness for duty investigation was being conducted, the Individual was warned by both a clinical psychologist (who his employer had ordered him to see) and his union representative that his prospects for continuing his employment were less than favorable. Shortly afterward, the Individual resigned for "personal reasons." When the Individual was subsequently asked *under oath* whether he had quit a job after being told he would be fired or left a job by mutual

agreement following allegations of misconduct or for other reasons under unfavorable circumstances, the Individual answered “no.” 2/ This statement was false.

Question 22 clearly did not ask for the official reason of record for leaving any previous jobs. Instead, Question 22 clearly required disclosure of any jobs that the Individual left under unfavorable circumstances. It is impossible to believe that Individual could have misinterpreted Question 22 in the manner which he suggests. Accordingly, I find that the local security office properly invoked Criterion F.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual’s eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO- 0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff’d*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶83,008 (1998) (affirmed by OSA, 1998). Hearing Officers must look at the statements of an individual, the facts surrounding the falsification and the individual’s subsequent history in order to assess whether the individual has rehabilitated himself from the falsehood and whether restoring the security clearance would pose a threat to national security. *See Personnel Security Hearing (Case No. VSO-0327)*, 27 DOE ¶ 82,844 (2000), *aff’d*, *Personnel Security Review*, 28 DOE ¶ 83,005 (2000) (affirmed by OSA, 2000); *Personnel Security Hearing (Case No. VSO-0418)*, 28 DOE ¶ 82,795 at 85,705 (2001). In the end, like all Hearing Officers, I must exercise my common sense judgment whether the individual’s access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. §§ 710.7(c).

In the present case, the Individual failed to provide sufficient explanation or mitigation of this falsification during this proceeding. In fact, the Individual’s actions during the present proceeding have served to reinforce the concerns raised by his intentional provision of false information on the QNSP.

For example, the Individual provided conflicting information concerning his conversations with a union representative. During his PSI, the Individual indicated that the union representative expressed confidence that he could be reinstated with the Police Department. PSI at 43. At the hearing however, the Individual testified that his union representative advised him that it would be in his best interests to resign. Tr. at 153. The Individual also provided conflicting accounts of his relationships with his employers. In the PSI, the Individual stated “I’ve always had good relationships with people I’ve worked for.” PSI at 44. However, at the hearing, the Individual attributed some of his problems at the Police Department to “personality conflicts with [his] Chief of Police.” Tr. at 145.

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2/ The QNSP submitted by the Individual contains a section entitled “Certification That My Answers Are True.” This section of the QNSP reads as follows: “My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.” QNSP at 9. The Individual signed and dated this certification. *Id.*

It is difficult to mitigate falsification of information provided to DOE security officials. In the present case, where the Individual has continued to prevaricate throughout this proceeding, a finding of mitigation would be most inappropriate.

## Criterion H

The Notification Letter alleges that the Individual has "an illness or mental condition of a nature which . . . causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Specifically, the Notification Letter states

The diagnosis from the psychiatric evaluation of your case by . . . a DOE-sponsored psychiatrist, completed on September 23, 2002 identified that you suffer from a Narcissistic Personality Disorder, Code 301.81, of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, a condition which causes, or may cause, a significant defect in your judgement or reliability.

Notification Letter at 2. The Individual asserts that the Psychiatrist's diagnosis is inaccurate. Specifically, the Individual contends, (1) he has, in the last three years, taken three Minnesota Multi-phasic Personality Inventory (MMPI) tests, each of which, he asserts, has failed to detect any evidence of mental illness, (2) the DOE Psychiatrist failed to administer any standardized tests to the Individual, (3) the DOE Psychiatrist's Interview of the Individual lasted less than one hour, (4) the Individual has worked at his current place of employment for over 17 months without exhibiting any signs of mental illness, (5) the Psychiatrist incorrectly attributed a trait to the Individual, that the Individual does not possess and (6) the DOE Psychiatrist was biased against the Individual.

The results of the MMPI tests do not serve to refute the Psychiatrist's diagnosis. As the Psychiatrist testified at the hearing, the MMPI would not necessarily detect a Narcissistic Personality Disorder. Tr. at 52-7, 59, 62-5, 72-74. Nor does the Psychiatrist's decision not to administer yet another MMPI suggest that the Psychiatrist (1) failed to conduct an appropriately thorough evaluation of the Individual, or (2) was biased against the Individual. The Individual also suggested that the duration of the Psychiatrist's interview of the Individual, about 45 minutes, suggests bias or lack of care on the part of the Psychiatrist. This assertion is obviously without merit.

At the hearing, the Individual attempted to discredit the Psychiatrist's Narcissistic Personality Disorder diagnosis by presenting the testimony of 5 of his current coworkers or supervisors. Each of these 5 witnesses testified about the Individual's on the job conduct for the previous 17 month period. Each of these witnesses indicated that the Individual had conducted himself in an exemplary manner at work during this period. <sup>3/</sup> None of these witnesses, however, were mental health

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<sup>3/</sup> The Individual also attempted to use the testimony of these coworkers to show that he does not have the personality trait described by the Psychiatrist as "grandiosity." Simply put, I am inclined to give far greater weight to the opinion of a board certified psychiatrist than to five laymen on this matter. I therefore, find that the Individual has not rebutted the Psychiatrist's conclusion that the Individual has the personality trait of grandiosity.

professionals. Each of these witnesses' contact with the Individual was limited to that which occurred at their work. None of these witnesses knew the Individual prior to his current employment. Most importantly, the Individual did not show that any of these witnesses were aware of his past history with the police department. Nor did the Individual submit any expert testimony indicating that he does not have Narcissistic Personality Disorder.

Moreover, the Psychiatrist has convincingly testified about the defects in the Individual's judgement and reliability caused by the Individual's disorder. Accordingly, I find that the local security office properly invoked Criterion H.

A finding that the individual has a mental illness or condition that causes or may cause a defect in an individual's judgement and reliability does not necessarily mean that person is ineligible for a DOE access authorization. However, in the present case, the Individual has neither exhibited any insight into his behavior nor acknowledged that he has a Narcissistic Personality Disorder. As a result, the Individual is not undergoing treatment or in remission from the disorder. Accordingly, I find that the Individual has not resolved the security concerns raised by the local security office under Criterion H.

### **Criterion L**

The Notification Letter charges that the Individual has "engaged in unusual conduct or is subject to circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). The Notification Letter's allegations under Criteria I are based on the derogatory information discussed above. In addition, the Notification Letter notes that the Individual has admitted to at least two extramarital affairs.

The record shows that the Individual is too untrustworthy to be entrusted with classified information or access to special nuclear materials. When the Individual was entrusted with the responsibilities of being a police officer, he chose to abuse them and use them in clumsy attempts to obtain sexual gratification. When the Individual was asked to provide background information that would allow DOE security officials to determine his suitability for access to classified information and special nuclear materials, he intentionally lied by omitting information which would have revealed his problems at the Police Department.

In addition, the Individual is clearly an extortion risk. He has admitted to at least two extramarital affairs. He has testified that his wife is unaware of either of these affairs. Tr. at 149-50. Moreover, I am concerned that the Individual may continue to engage in extramarital affairs or the type of conduct which led to his problems with the Police Department.

After considering these factors, I am convinced that the Individual has not mitigated or resolved the security concerns raised under Criterion L by his unusual behavior.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criterion F, H and L. Therefore, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization 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.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: August 28, 2003