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September 14, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: March 12, 2009
Case Number: TSO-0714

This decision concerns the eligibility of XXXX XXXXX (hereinafter referred to as "the Individual") to have his security clearance restored 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 a large volume of derogatory information developed during the course of a background investigation of the Individual. On August 20, 2007, a Local Security Office (LSO) conducted an extensive personnel security interview (PSI) of the Individual.¹ At the LSO's request, a DOE Psychologist performed a forensic psychological evaluation of the Individual on January 11, 2008.²

Unable to resolve the security concerns raised by the large amount of derogatory information, the LSO initiated administrative review proceedings in February 2009, 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 a six-page attachment to the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f), (h), and (l).³

¹ A copy of the transcript of this PSI appears in the record as Exhibit 8.

² A copy of the DOE Psychologist's report appears in the record as Exhibit 12.

³ Specifically, the Notification Letter alleges that the Individual has:

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 the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on May 13, 2009.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his wife, his aunt, his uncle, a close friend, his union steward, the DOE Psychologist, and a personnel security specialist. *See* Transcript of Hearing, Case No. TSO-0714 (hereinafter cited as "Tr."). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14, while the Individual submitted no exhibits.

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

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

(2) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability, 10 C.F.R. § 710.8(h) (Criterion H); and,

(3) 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).

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

On March 21, 1986, the Individual, who was serving in the armed forces, was reprimanded by his commanding officer for “Communicating a Threat.” The Commander’s Report of Disciplinary or Administrative Action states that the Individual “threatened [a fellow soldier] by pointing a weapon (.45 caliber pistol) at her telling her that she could not live at his house . . . or he would kill her.”⁴ This report further concluded that “there is enough evidence and statements to title [the Individual] with Communicating a Threat ART 134 UCMJ.” Exhibit 14 at 3.

On February 10, 1992, a local court issued a warrant for the Individual’s arrest. That warrant asserts that the Individual, while employed as a peace officer, “did maliciously cause a child, [], 14 years of age, excessive physical and mental pain when he lured said child to his residence and had sexual intercourse with her.” Exhibit 9 at 1. On April 20, 1992, a grand jury issued an indictment alleging that the Individual had violated his state’s Cruelty to a Child statute. Exhibit 11 at 5-6. Violation of that state’s Cruelty to a Child statute constituted a felony. Exhibit 10. The Individual plead not guilty to that charge on May 8, 1992. Exhibit 11 at 7. On September 10, 1992, the Individual agreed to plead guilty to a reduced charge of Fornication, a misdemeanor. *Id.* The Individual was placed on supervised probation for one year. *Id.* at 1-2. Under the terms of the Individual’s probation, he was required to surrender his peace officer’s certification and leave the area. *Id.* at 2. The Individual completed his probation and the charge was discharged. The documents certifying the Individual’s successful completion of probation bear a stamp that reads: “By order of this court: Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his civil rights or liberties, and the defendant shall not be considered to have a criminal conviction.” Exhibit 11 at 1-4.

The QNSP

On August 16, 2006, the Individual submitted a Questionnaire for National Security Positions (QNSP) to the LSO.⁵ The Individual’s response to QNSP Question 13.1 indicated that he had only one former spouse. The Individual actually had three ex-spouses, including the spouse to whom he was married when he was charged with Cruelty to a Child. Question 22 asked the Individual if he had “1. [been] fired from a job, 2. Quit a job after being told [he] would 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

⁴ The LSO submitted the Commander’s Report of Disciplinary or Administrative Action after the hearing at my request. It appears in the record as Exhibit 14.

⁵ A copy of this QNSP appears in the record as Exhibit 7.

under unfavorable circumstances.” The Individual answered “no” to each of these questions. Exhibit 7 at 30. At the hearing and the PSI, the Individual admitted he had three former spouses when he submitted the QNSP.

Question 23 states “For this item, report information regardless of whether the record in your case has been ‘sealed’ or otherwise stricken from the record.” Question 23a then asks “Have you ever been charged with or convicted of any felony offense? (Include those under Uniform Code of Military Justice).” The Individual answered “no” to this question. Question 23b asks “have you ever been charged with or convicted of a firearms or explosives offense?” The Individual answered “no” to this question.

The OPM Investigation

An OPM Investigator conducted a background investigation of the Individual and issued a report on July 13, 2007.⁶ That report contains an extraordinary amount of derogatory information. During his interview by the OPM Investigator, the Individual stated that he (1) “has never received any disciplinary actions or been terminated by any employer,” (2) “has never left an employment position under unfavorable circumstances,” (3) has “never been arrested or cited for any offense under the law,” and (4) has “never been charged with a firearms offense.” OPM Report at 2-3.

During the period November 1998 through August 2006, the Individual worked for three employers who will be referred to as Employers A, B, and C. The Individual’s assertion to the OPM Investigator that he has never received any disciplinary actions conflicts with evidence obtained by the OPM Investigator showing that Employer A formally disciplined the Individual on at least two occasions and Employer C verbally counseled the Individual on several occasions.⁷ The evidence obtained by the OPM Investigator also indicates that the Individual left Employers A, B, and C under highly unfavorable circumstances.

The branch manager at Employer C informed the OPM Investigator that the Individual had received two separate written warnings for failing to report to work, on August 7, 2006, and on August 10, 2006.⁸ OPM Report at 8-9. According to the branch manager, when Employer C issued a second written warning to the Individual it also suspended him for two days. *Id.* at 9. Employer C’s Operations Manager reported that the Individual was excellent at his job, but his family circumstances had caused him to miss work too often. *Id.* at 12. Because of his excessive absenteeism, the Individual would not be eligible for rehire with Employer C. *Id.* The Operations Manager also reported that the Individual appeared to have “problems with female authority.” *Id.* The Individual’s supervisor at Employer C reported that the Individual only

⁶ A copy of the OPM Investigator’s report appears in the record as Exhibit 13.

⁷ The Individual repeated this assertion during his hearing testimony. Tr. at 229-30.

⁸ The OPM Investigator’s Report indicates that the Individual received written warnings from Employer C on August 7, 2006, and on August 10, 2006. The Individual began working for his present employer in August 2006.

worked on two of his last ten scheduled days. *Id.* at 13. The Individual's supervisor at Employer C also stated that he did not believe the Individual had been "honest and straight forward" regarding his absences from work.⁹ *Id.*

The Chief of Police for Employer B reported a number of complaints concerning the Individual, including a claim by a coworker at Employer B who alleged that the Individual had made an unwanted sexual advance toward her. OMB Report at 15. The Chief of Police also reported that a citizen complained that the Individual asked her out on several occasions, stalked her using a police cruiser, attempted to kiss her, and had strip-searched her on false pretenses. OMB Report at 16. The Chief of Police for Employer B reported that an investigation into this complaint led to the Individual's resignation from Employer B. *Id.* at 18. The Chief of Police for Employer B also accused the Individual of falsifying an offense report and warrant for arrest as a favor to a friend who was trying to recover her motor vehicle. *Id.* at 19. The Chief of Police indicated that he was aware of the Cruelty to a Child allegation. *Id.*

A former coworker and friend of the Individual informed the OPM Investigator that the Individual resigned from Employer B because the Individual's former spouse informed the Individual's supervisor of the 1992 Cruelty to a Child allegation. OPM Report at 10. The Individual's uncle informed the OPM investigator that the Individual was forced to resign from Employer B.¹⁰ *Id.* at 36.

The Individual's former supervisor at Employer A, a police department, reported that the Individual had poor relationships with his coworkers. OPM Report at 40. Employer A received complaints from the community that the Individual was "involved with young females of the community." *Id.* The former supervisor stated that he counseled the Individual and a female coworker when he repeatedly found them alone in a locked office. *Id.* at 41. The former supervisor also verbally counseled the Individual for using a police car for personal business and for failing to keep radio contact. *Id.* The former supervisor indicated that he was considering further actions against the Individual when the Individual resigned from Employer A. *Id.* The former supervisor indicated that he would not rehire the Individual because the Individual had "disobeyed orders and disregarded the duties of his law enforcement positions."¹¹ *Id.* at 42.

One of the Individual's former coworkers (at both Employer B and Employer A) reported that the Individual would refrain from issuing citations to females in exchange for sexual favors. *Id.* at 17. This coworker described the Individual as "a disgrace to law enforcement." *Id.* One of the Individual's three former spouses stated that Employer A had fired the Individual. OPM

⁹ The Individual's own testimony established that he failed to report for work at Employer C one day, in defiance of explicit instructions to the contrary by his supervisor, in order to take a qualifying test for his present employer.

¹⁰ A close friend and co-worker testified that the press had shown up at Employer B inquiring about the Cruelty to Children Charge. Tr. at 85. The close friend and co-worker also testified that the Individual left Employer B because of bad publicity arising from the Individual's 1992 incident. Tr. at 113.

¹¹ At the hearing, the Individual testified that his supervisor at Employer A, asked him to lie to state officials and he had refused. Soon thereafter, he left Employer A to work for Employer B. Tr. at 205.

Report at 28.

The PSI

On August 20, 2007, the LSO conducted a PSI of the Individual. During this PSI, the Individual was asked about the Cruelty to a Child charges. The Individual stated that he had “met a young lady that told me her age was 18. Turned out it wasn’t.” Exhibit 8 at 6. He then explained:

Apparently she had written a letter to a friend. Her mother had found it. I received a phone call from her mother demanding some money. I refused and the next thing I know [the state] Bureau of Investigations called me.

Exhibit 8 at 7. The Individual further stated:

In the mall walkin’ around, met this girl. She lived in the same town as I was livin’ in, chitchatted and that was about it. She went to a DARE Function with me. And like I said, next thing I know, I’m getting visits from [the State] Bureau of Investigation.

Id. at 9.¹² The Individual denied that he had sex with the child on whose behalf the charges were filed. *Id.* at 12. The Individual denied that he had been charged with a felony. *Id.* at 14. The Individual contended that the charge he plead guilty to, Fornication, was not a felony. *Id.* at 19. The Individual also claimed that he never entered a guilty plea. *Id.* at 15. The Individual indicated that contact with the alleged victim was limited to two occasions: when he first met her, and when he took her to a DARE function. *Id.* at 21.

During his PSI, the Individual stated:

I was informed by the judge that it could never be used . . . It’s deleted from my record . . . I never was charged and that nothin’ and that all records were supposed to be destroyed, and that it could never be used against [me] for employment or offices or anything.

Id. at 10. The Individual admitted that, as a condition of his probation, he was required to surrender his law enforcement certification, leave his job as a DARE officer, and to leave the jurisdiction. *Id.* at 38. The interviewer asked the Individual why he was charged with Fornication if he did not have sexual relations with the alleged victim. The Individual responded by stating that the Fornication statute did not require sexual relations. Exhibit 8 at 20.

The Individual contended that he only had one written warning from Employer C and that it was undeserved. *Id.* at 57-59. He further denied that he only worked two of his last ten days at

¹² At the hearing, the Individual provided a somewhat different account. He claimed that he had taken the alleged victim to a church where a DARE meeting was going to be held. The DARE meeting was unexpectedly cancelled. He then took the alleged victim to dinner at a local restaurant before escorting her to her mother’s home.

Employer C. *Id.* at 65.

The Individual was asked to discuss his employment at Employer B. The Individual indicated that his ex-spouse had contacted the local district attorney's (DA) office and informed the DA about the Individual's history of alleged sexual relations with a minor. *Id.* at 29-30. When the Individual went to work one day, television news crews were there to cover the story. *Id.* at 30. The Individual denied that he was investigated for propositioning a female for sexual favors. *Id.* at 31-33. The Individual stated that a woman he arrested accused him of soliciting sexual favors. *Id.* at 33.

When he was confronted with Employer B's allegation that he had made an unwanted sexual advance on a coworker, the Individual responded by stating "I have no idea what, that ain't in my personnel record." *Id.* at 66. He then denied the allegation. *Id.* at 67. He also denied that he had, while wearing his uniform, asked a female out on several occasions, stalked her using a police cruiser, attempted to kiss her, and strip-searched her, claiming instead that he searched her because of a report that she had illegal drugs in her possession. *Id.* at 68-69. The Individual also denied the Chief of Police for Employer B's allegation that he had falsified an offense report and warrant for arrest. *Id.* at 90-93. The Individual specifically stated: "I've never in my life falsified one document." *Id.* at 93. When the interviewer noted that there were a number of people who accused the Individual of misusing his authority as a police officer, the Individual contended it was due to rumors spread by a former spouse who was trying to get him fired in order to gain custody of their two children. *Id.* at 95-96. He further claimed that the people providing derogatory information about him are "all connected from her, [his ex-spouse] tryin' to help her to get to me." *Id.* at 96. The Individual further claimed that:

On top of that, I was getting close to [a source of derogatory information]. I was almost afraid of putting him in jail. A city council member was almost ready to go to jail. My half-brother has connections, I'd say, that oh, within some departments, because him and my ex-wife are involved in illegal narcotics, the laundering of the money . . . and I was getting close of provin' all that to try to put both of them in jail. That's weird like you said in there about my half-brother and the narcotics.

Id. The Individual claimed that his former supervisor at Employer A provided derogatory information because the Individual had refused to "lie" on the former supervisor's behalf. *Id.* at 99-101. The Individual also contended that Employer A would rehire him. *Id.* at 101. When he was asked about the former supervisor's statement that he counseled the Individual and a female coworker when he repeatedly found them alone in a locked office, the Individual claimed "that's coming from my ex-wife right there." *Id.* at 103.

The DOE Psychologist

On January 11, 2008, a DOE Psychologist performed a forensic psychological evaluation of the Individual. On January 25, 2009, the DOE Psychologist issued a report in which he concluded

that the Individual does not have an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability. Exhibit 12 at 12. The DOE Psychologist's report also indicated that the Individual reported that he had "dated" the alleged victim of the Cruelty to a Child charge.

IV. CONCLUSIONS OF LAW

Criterion F

The record in this case demonstrates unequivocally that the Individual's conduct during the security clearance process raises a number of security concerns. The QNSP submitted by the Individual omitted significant information concerning his eligibility to maintain an access authorization. The Individual compounded these security concerns, and raised further doubts about his honesty and credibility by providing false information to the OPM Investigator. Deliberately omitting or concealing relevant facts and the provision of false information during a process for determining eligibility for a security clearance demonstrates questionable judgment and lack of candor, and can also raise questions about an individual's reliability, trustworthiness and ability to protect classified information. 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).

At the hearing, the Individual provided several explanations for omitting the 1992 Cruelty to a Child charge from the QNSP. First, the Individual testified that he had never been arrested or charged with a felony.¹³ Tr. at 191, 263, 268. Then, the Individual contended that he was exonerated of any crime, was not adjudicated of any guilt, and was never convicted. Tr. at 234-235. Next, the Individual asserted that he was informed by the sentencing judge, his attorney, and the prosecuting attorney that if he completed probation successfully, it would be "as if the matter never happened" and therefore he was under the impression he did not have to disclose the charges on his QNSP. Tr. at 193, 196-197, 233-234.

The Individual has failed to resolve the doubts arising from his failure to disclose the 1992 charge of Cruelty to a Child on his QNSP. First, I did not find credible the Individual's testimony that he had never been arrested or charged with a felony. The Individual testified that he knew that the charge, Cruelty to a Child, was a felony, Tr. at 268, and as discussed above, the record contains copies of both a warrant for the Individual's arrest for Cruelty to a Child and a Grand Jury indictment for Cruelty to a Child. Moreover, by continuing to deny that he had been charged with a felony at the hearing, the Individual further impeached his own credibility.

Second, the Individual did not persuade me that his successful completion of probation and subsequent dismissal of criminal charges lead him to omit the information from the QNSP. Under Criterion F, the validity of the underlying charge is irrelevant. QNSP Question 23a

¹³ When the DOE Counsel asked the Individual why he omitted the 1992 charge from the QNSP, he responded by testifying: "I never pled guilty to anything and I wasn't charged with anything." Tr. at 269.

specifically requires that the Individual disclose any felonies that he was “charged with or convicted of” regardless of the ultimate result of those charges.

Third, I do not find the Individual’s alleged reliance upon the erroneous advice of attorneys in 1992 that he did not need to disclose the 1992 charge in the future is grounds to mitigate this issue. Guideline E states that when an omission “was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual” can constitute a mitigating condition. Guideline E at ¶ 17(b). However, Guideline E requires that such advice must specifically concern the security clearance process. *Id.* Any legal advice provided during the Individual’s 1992 plea agreement negotiations would not constitute such a circumstance. Moreover, the QNSP’s instructions clearly placed the Individual on notice that he was expected to disclose every instance in which he was charged with a felony, regardless of whether he was required to disclose such information in other contexts. QNSP Question No. 23 stated “For this item, report information **regardless of whether the record in your case has been ‘sealed’ or otherwise stricken from the record.**” (emphasis supplied). In view of the explicit directions on the security form at issue, I find that the Individual was on notice that he was required to divulge the information that he concealed.

At the hearing, the Individual attempted to resolve issues raised by his answers to QNSP Question 23b by testifying that he had never left a job by mutual agreement following allegations of misconduct or for other reasons under unfavorable circumstances. Tr. at 229-230. He specifically denied leaving Employers A, B, or C under unfavorable circumstances. Tr. at 230. As the record discussed above indicates, this testimony is in clear conflict with the weight of other evidence in the record.

At the hearing, the Individual testified that he had not omitted a firearms charge from the QNSP. Tr. at 184. The Individual claimed that the Commander’s Report of Disciplinary or Administrative action was inaccurate. *Id.* I have examined the Commander’s Report at issue. It was created contemporaneous to the event in question, and generated in the ordinary course of business. My overall assessment of the Individual at the hearing is that he did not testify candidly about most of the matters before me. Since the Individual’s testimony that the military records are inaccurate is his only evidence that he did not use a gun while “communicating a threat,” I am unable to find that the security concerns arising from this allegation have been resolved. Therefore, I am unable to conclude that the Individual was not required to disclose the Communicating a Threat charge in response to QNSP Question 23b.

At the hearing, the Individual did not directly address, explain or otherwise attempt to mitigate the false statements he allegedly made to the OPM Investigator. Accordingly, the Individual has not mitigated the security concerns raised by his false statements during the OPM Investigator’s Interview. Since the Individual has not mitigated the security concerns raised by his omissions from the QNSP and his false statements during the OPM Investigator’s Interview, the Security concerns set forth in the Notification Letter under Criterion F remain unresolved.¹⁴

¹⁴ During the PSI, the Individual claimed that sexual relations was not a required element of the Fornication statute to which he plead guilty. The Notification Letter alleges that sexual relations are in fact a required element under

Criterion H

Despite the DOE Psychologist's conclusion that the Individual does not have a mental condition which causes or may cause a defect in judgment or reliability, the Notification Letter alleges that derogatory information in the record raises security concerns about the Individual under Criterion H. The Notification Letter correctly notes that Adjudicative Guideline I, which applies to psychological conditions, provides that "a formal diagnosis of a disorder is not required for there to be a concern under this guideline." Guideline I at ¶ 27. However, DOE's Part 710 regulations require a diagnosis of a mental illness or condition by a psychiatrist or licensed clinical psychologist and a statement by one of these two mental health experts that the illness or condition causes, or may cause a significant defect in judgment or reliability. For this reason, I find that Criterion H was not properly invoked in this case. I will, however, consider the Individual's behavior in question under Criterion L.

Criterion L

The Individual has been accused on a number of occasions of inappropriate conduct that raises significant doubts about his judgment, reliability, and trustworthiness. As the record discussed in detail above has shown, the Individual was charged with a serious crime, Cruelty to a Child; pled guilty to the misdemeanor, Fornication; was disciplined for Communicating a Threat while in the military; and repeatedly disciplined by a number of former employers for workplace issues. The Individual has also been repeatedly accused, by a number of sources, of various sexual improprieties including sexual harassment and ignoring criminal offenses while employed as a police officer in exchange for sexual favors. The Individual has been repeatedly accused of misusing the trust placed in him as a law enforcement official. The record has conclusively established the Individual's lack of candor during the present security clearance process.

These accusations raise significant security concerns under Criterion L. "Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Guideline D at ¶ 12. "Conduct involving questionable judgment, 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." Guideline E at ¶ 15. "Certain emotional, mental, and personality conditions can impair

the Fornication statute. The Notification Letter therefore alleges that the Individual was attempting to deceive the interviewer by opining that sexual relations were not a required element of a crime under the Fornication statute. Since it remains unclear whether the Individual's incorrect interpretation of the Fornication statute was due to a misunderstanding of the law or to an intent to mislead on his part, this allegation remains unresolved. The Notification Letter's allegation that the Individual admitted to the DOE Psychologist that he had dated the alleged victim of the Cruelty to a Child charge was mitigated by the DOE Psychologist's testimony that the Individual had not reported that he had dated the alleged victim.

judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Guideline I at ¶ 27. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” Guideline J at ¶ 30.

The Individual denies all of the allegations made against him. He attributes much of the derogatory information to a conspiracy involving his former spouse, his half-brother and former co-workers. Some of the allegations, he contends, originated with persons whom he arrested or investigated.

I am unable to assign any credibility to the Individual's denials. As I have discussed at length above, the Individual has exhibited a pronounced lack of candor throughout the present security clearance process. Many of the explanations and rationalizations provided by the Individual are inconsistent with each other or other, more reliable, evidence in the record. On the other hand, the sheer number of accusations lends weight to their credibility. Their similarities and common themes also add to their credibility. Moreover, several of these sources of derogatory information are law enforcement officials, which further enhance their credibility.

The derogatory information in the record paints a particularly disturbing picture of the Individual. This information suggests that the Individual has engaged in inappropriate and predatory sexual behavior, misused his authority as a police officer, engaged in criminal activity, and has been dishonest with DOE security officials. Moreover, the Individual has refused to take responsibility for any of his actions and has demonstrated a striking lack of insight. Accordingly, I find that the Individual has not resolved the security concerns raised under Criterion L.

V. CONCLUSION

For the reasons set forth above, I conclude 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, the Individual's access authorization 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. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: September 14, 2009