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September 4, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 1, 2009

Case Number: TSO-0727

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for a DOE access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's request for access authorization should be granted. For the reasons detailed below, it is my decision that the Individual's request for access authorization should not be granted at this time.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization.² See Notification Letter, February, 19, 2009.

The Notification Letter cites the Individual's failure to disclose the full extent of his past marijuana use and his failure to disclose two marijuana-related criminal citations on a March 2007 Questionnaire for National Security Positions (QNSP) as security concerns under 10 C.F.R. § 710.8(f) (Criterion F).³ On the March 2007 QNSP, the Individual indicated that he used marijuana between July 1996 and May 2002. Notification Letter at 1; see also DOE Ex. 7. However, during a November 2008 personnel security interview (PSI), the Individual admitted that his marijuana use took place over a longer period of time, between sometime in 1994 and August 2006. Notification Letter at 1; see also DOE Ex. 3. The Individual admitted that he failed to disclose the full extent of his marijuana use on the March 2007 QNSP for fear of not

¹ 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>.

² Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

³ Criterion F pertains to false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual's eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such statements raise serious doubts regarding an individual's honesty, reliability, and trustworthiness. 10 C.F.R. § 710.8(f).

receiving his clearance. Notification Letter at 1. In addition, the Notification Letter states that the Individual certified on a March 2007 QNSP that he has never been charged with or convicted of any offenses related to drugs. However, during PSIs in July 2008 and November 2008, the Individual that he was cited for Possession of Marijuana in 2005 and was arrested for Possession of Marijuana in 1996. *Id.*; *see also* DOE Exs. 3, 4.

In addition to the Criterion F concerns, the Notification also identifies security concerns under 10 C.F.R. § 710.8(k) (Criterion K).⁴ The Notification Letter cites various marijuana-related incidents as raising concerns under Criterion K. Those incidents are as follows: the Individual was cited in November 2005 for “Possession of Marijuana, one ounce or less;” the Individual was arrested in September 1996 for “Possession of Marijuana” while in high school, which also resulted in his suspension from school; the Individual’s last use of marijuana in August 2006, just seven months prior to his signing the March 2007 QNSP, led him to test positive on an employment drug screen; and, the Individual used marijuana until 2006, despite having attended “drug-related counseling” from 1994 to 1995. Notification Letter at 2.

Finally, the Notification Letter also cites an 11-year pattern of incidents involving police citations, arrests, and detentions as a security concern under 10 C.F.R. § 710.8(l) (Criterion L).⁵ In addition to the November 2005 and September 1996 marijuana-related incidents noted above, the Letter cites the following incidents: the Individual was detained for questioning in December 2007, while in process for a security clearance, regarding his association with his cousin’s husband, a known gang member; in October 2005, the Individual received a criminal citation for Battery and Tampering with Evidence, after he became involved in a physical altercation; in November 2004, the Individual was cited for Disturbing the Peace/Noise Ordinance for playing his radio too loud while driving; and, the Individual knowingly associated with gang members between 1995 and 2000. Notification Letter at 2-3.

Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual’s Letter, March 5, 2009. During the pendency of this proceeding, but prior to the hearing, the Individual was involved in an April 2009 motor vehicle accident, which resulted in his arrest for “Driving While Intoxicated, Careless Driving, and Resisting or Obstructing Arrest.” After being notified of the incident by the Individual, the LSO issued an amended Notification Letter in June 2009. *See* Amended Statement of Charges, received June 9, 2009. The amended Notification Letter included the April 2009 arrest as an additional incident in the long pattern of legal trouble cited as a security concern under Criterion L. *Id.*

At the hearing, the Individual presented his own testimony, as well as the testimony of his mother, his work mentor, a co-worker, his brother, two cousins, and a friend. The DOE counsel did not present any witnesses.

⁴ Criterion K pertains to information indicating that an individual has “trafficked in, sold, transferred, possessed, used, or experimented with” illegal substances. 10 C.F.R. § 710.8(k).

⁵ Criterion L concerns refer to conduct tending 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.” 10 C.F.R. § 710.8(l).

II. HEARING TESTIMONY

A. The Individual

The Individual testified about each of the security concerns. As to the Criterion F concerns regarding his failure to disclose the full extent of his past marijuana use and marijuana-related legal incidents, the Individual initially attributed his incomplete answer regarding the extent of his past marijuana use on the March 2007 QNSP to his misunderstanding of the question and his poor recollection of past events. Hearing Transcript (“Tr.”) at 69-71. Ultimately, however, the Individual admitted that he provided incomplete answers because he was afraid he would not be able to obtain a security clearance if he told the truth. Tr. at 73-74. In addition, the Individual stated that he did not list the marijuana-related arrest in 1996 and citation in 2005 because he believed that since the charges were ultimately dropped, he was not required to list them on his QNSP. Tr. at 78-79. The Individual stated that he was not trying to withhold the information from the DOE. Tr. at 79. He believes he can be trusted to be honest in the future. Tr. at 80. He further stated that he will be more careful to “read the questions thoroughly” and to provide complete answers. *Id.*

As to the Criterion K security concerns raised by his past marijuana use, the Individual stated that he no longer uses any illegal drugs. He stated that he has too much going for him to risk using marijuana. Tr. at 81. The Individual stated that working full-time in his current position while also going to college full-time has altered his perspective. *Id.* He is no longer subject to the same negative influences which led him astray in high school. *Id.* The Individual stated that his education and employment are the most important things in his life. Tr. at 82. He does not associate with anyone who uses illegal drugs. *Id.*

Finally, the Individual testified regarding the Criterion L concerns raised by his pattern of legal trouble, particularly his April 2009 DWI arrest. The Individual admitted that he was intoxicated when he had the accident in April 2009 which led to his DWI arrest. Tr. at 84. He “[has] no idea” why he decided to drive after drinking alcohol. *Id.* At the time, he did not believe he was intoxicated. *Id.* The Individual pled guilty to DWI. Tr. at 88. The Individual attributed most of his other legal incidents to making “stupid mistakes [and] stupid decisions” when he was young. Tr. at 90. Regarding his detention for questioning in December 2007, the Individual stated “I did happen to be in the wrong place at the wrong time, talking to my cousin. He’s not even my cousin, he’s my cousin’s husband. It was cold that day, I didn’t have a jacket on. I got in his vehicle. I had no idea what he was doing there the whole time. I sat in [his car] and talked to him.” Tr. at 91-92. The Individual was aware that his cousin’s husband was a gang member. Tr. at 92. He stated, however, that he does not currently associate with any gang members. *Id.* He no longer talks to his cousin’s husband. *Id.* The Individual stated, “I know I have a fuzzy background there ...I’m not happy [about] it at all.” *Id.* He added his education and employment are his priorities and he is trying to put his past behind him and be successful. Tr. at 93-94.

B. The Individual's Mother

The Individual's mother believes the Individual is trustworthy. Tr. at 22-23. He likes his job and his schoolwork. Tr. at 23. The Individual's mother is aware that the Individual used marijuana in junior high school and high school, but she does not believe he currently uses any illegal drugs. Tr. at 24. The Individual lives in her home and she has not seen any evidence of marijuana or any drug paraphernalia in his living space or in his vehicle. Tr. at 25. She is not aware of whether he associates with anyone who uses illegal drugs. *Id.* She does not believe the Individual has a drug problem, despite his marijuana use when he was younger. Tr. at 29. She does not know why the Individual used marijuana in the past. Tr. at 25. The Individual's mother is aware of the Individual's history of arrests and other legal trouble, but still believes him to be trustworthy. Tr. at 26-27. She does not believe he will get into trouble anymore. Tr. at 27. The Individual never tries to hide his mistakes. Tr. at 28.

C. The Individual's Brother

The Individual's brother stated that the Individual is "a good kid" and is "not a troublemaker." Tr. at 109, 110. Regarding the Individual's DWI, his brother stated that the Individual "just made a mistake." Tr. at 110. He also stated that the Individual is the type of person who "will learn from his mistakes" and "move forward." Tr. at 112, 115. He believes the Individual to be trustworthy. Tr. at 113. The Individual's brother was involved in the incident which led to the Individual's October 2005 citation for Battery and Tampering with Evidence. Tr. at 109. The brother was intoxicated and involved in a physical altercation. The Individual drove by, saw the incident, and got out of his car to try to break up the fight and make him go home. Police officers were called to the scene and the Individual was cited because he helped his brother leave the scene. Tr. at 109-10. The Individual's brother stated that the Individual "only meant well, he was just taking me home, trying to get me out of there. [The Individual] had nothing to do with [the fight]." *Id.*

The Individual's brother is aware of the Individual's past marijuana use. However, he has no reason to suspect the Individual of any recent illegal drug use. Tr. at 115. He has not seen any evidence of marijuana in the Individual's home or car. Tr. at 115-16. The Individual spends most of his free time with his parents and nephew. His brother added, "if [the Individual is] not a work, he's at [school], and if he's not at [school], he's home on the computer studying." Tr. at 116. The Individual's brother does not believe the Individual would be performing as well at school and work as he has been if he were involved in any drug use because using drugs "interferes with your social relationships and work." *Id.*

D. The Individual's Cousins

Two of the Individual's cousins testified at the hearing. Cousin 1 has known the Individual all of his life. Tr. at 58. She used to see him frequently, but now they see each other once every one or two months. Tr. at 62. She is aware that the Individual smoked marijuana "when he was much younger," but he has not smoked marijuana since 2005 or 2006, "when he was really excited about getting [his current job]." Tr. at 59. Cousin 1 has no reason to believe the Individual has used marijuana recently. Tr. at 63. She has been in his home and has not seen any evidence of

illegal drugs or drug paraphernalia. *Id.* To her knowledge, the Individual does not associate with anyone who uses illegal drugs. *Id.* Cousin 1 stated that the Individual was honest with her about his DWI. Tr. at 61. She stated that she was disappointed in him at that time because she “thought [he] had a better head on [his] shoulders.” Tr. at 61. Nonetheless, Cousin 1 believes the Individual to be trustworthy because he always helps her when she needs him. Tr. at 60. For example, he used to babysit her daughter. Tr. at 61. Finally, Cousin 1 believes the Individual tells the truth, even when it might be easier or better for him to lie. Tr. at 63.

Cousin 2 has also known the Individual all his life and they were raised in “a tight-knit family.” Tr. at 98. He and the Individual are neighbors and see each other frequently. Tr. at 103. He is aware that the Individual smoked marijuana in high school, but has no reason to believe the Individual currently uses any illegal drugs. Tr. at 98, 103. He has been both in the Individual’s home and vehicle and has not seen any evidence of drugs or drug paraphernalia. Tr. at 103. Cousin 2 stated that the Individual was “pretty upset” about his DWI. Tr. at 99. The Individual told him that “he messed up and he didn’t understand why he did it.” *Id.* Cousin 2 stated that the Individual “really wants to be successful” and was one of the first in their family to pursue a college education. Tr. at 101-02. He believes the Individual is working on becoming more mature, but has not fully accomplished that goal, adding, “I think he struggles with it.” Tr. at 99. Cousin 2 stated that the Individual has never lied to him. Tr. at 104. Finally, Cousin 2 does not believe the Individual has a “habit” of getting into trouble, but “he’s probably put himself in the wrong place at the wrong time more than once.” Tr. at 103.

E. The Individual’s Friend

The Individual’s friend is a long-time friend of the family and has known the Individual his whole life. Tr. at 48. He sees the Individual about once every other week. Tr. at 54. He believes the Individual is a “good kid” and he has “always admired [the Individual] ... and give[s] him a lot of credit for what he has done. He’s gone to school ... he’s a hard worker, and trustworthy.” Tr. at 49, 50. The Individual told him about his April 2009 DWI. He told him that he had been drinking alcohol and “he didn’t know why he went out on the road.” Tr. at 50. The Individual’s friend told the Individual he has to be honest about the DWI and report the incident to the DOE. *Id.* The Individual’s friend has never known the Individual to use illegal drugs and is unaware of any arrests other than the DWI. Tr. at 52, 54.

F. The Individual’s Co-Worker

The Individual’s co-worker has known the Individual for one and one-half years, since the Individual applied for his current position. Tr. at 9. The Individual currently works with his team. *Id.* The Individual’s co-worker trusts the Individual and feels confident he can responsibly handle very expensive equipment. Tr. at 11-12. He has placed the Individual in situations where he needed to be proactive and teach himself how to handle equipment and the Individual “did very well.” *Id.* The Individual is “absolutely” reliable, has completed “every single task” he has been assigned, is rarely absent from work, and does not require much supervision to do his job. Tr. at 12-13. The Individual’s co-worker is aware of the Individual’s DWI arrest and it does not change his opinion of the Individual. Tr. at 13-14. He stated, “I don’t know [the Individual’s] personal life, how much he drinks, or what, but I do know that here at

work ... we always rely on him. He always seems of sound mind.” Tr. at 14. The Individual told his co-worker that he used marijuana “way in the past when he was a teenager” and one time several months before he began his current position in early 2007. Tr. at 16-17. The Individual’s co-worker stated that the Individual’s “performance has been impeccable” and his knowledge of the Individual’s past legal trouble does not change his opinion. Tr. at 18. Finally, he believes the Individual is honest. Tr. at 18-19.

G. The Individual’s Mentor

The Individual’s mentor has known the Individual since the Individual had his first interview for his current position. Tr. at 31-32. He selected the Individual over two other well-qualified candidates because of the Individual’s “technical skills” and “good customer relationship skills.” Tr. at 32. The Individual has “done a very good job.” Tr. at 44. He is “a self-starter” and requires “very low supervision.” *Id.* The mentor is “absolutely” pleased with the Individual’s work performance. *Id.* However, the Individual’s mentor was “very disappointed” by the Individual’s DWI arrest. Tr. at 33. He talked with the Individual about it, but he “wanted [the Individual] to deal with it himself, to understand what the consequences are.” *Id.* The Individual “was remorseful” when he told his mentor about the DWI; he realized that “this was a serious mistake.” Tr. at 35. The Individual apologized for his lack of judgment on the night of his DWI arrest. Tr. at 42.

Overall, the Individual’s mentor believes that the Individual has progressed, but his DWI demonstrates that he has not yet become fully mature. Tr. at 36. The Individual has “grown, but he’s also taken a step backwards.” Tr. at 39. He is excelling academically and is “someone who is determined, has goals, is willing to put forth the effort to succeed and be successful.” Tr. at 39-40. However, the mentor believes that, while the Individual’s progress at school and work is a sign of responsibility, the Individual’s DWI demonstrated irresponsibility and lack of judgment and the mentor questions whether the behavior will recur. Tr. at 34-35, 40.

III. STANDARD OF REVIEW

The regulations governing the Individual’s eligibility for an access authorization are set forth are 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” An individual is eligible for access authorization if such 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). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a).

IV. ANALYSIS

A. Criterion F – Falsification

As noted above, Criterion F concerns involve false statements, misrepresentations or omissions by an individual during the course of an official inquiry regarding the individual’s eligibility for access authorization, including responses during personnel security interviews or on security questionnaires. Such false statements, misrepresentations or omissions raise serious doubts regarding the individual’s 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 that individual can be trusted again in the future. *See 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) (the Adjudicative Guidelines), Guideline E, ¶ 15; *see also, e.g., Personnel Security Hearing*, Case No. VSO-0013 (1995); *Personnel Security Hearing*, Case No. VSO-0281 (1999), *aff’d*, Case No. VSA-0281 (2000).

The Notification Letter cites the Individual’s failure to disclose the full extent of his marijuana use and his marijuana-related legal incidents as security concerns under Criterion F. After considering the record in this case, I am unable to find that the Individual has mitigated the Criterion F concern. The Individual admitted that he intentionally misrepresented the full extent of his past marijuana use on the March 2007 QNSP because he was afraid it would affect his ability to obtain a security clearance. He further acknowledged that he should have listed the 1996 arrest and the 2005 citation for Possession of Marijuana on the QNSP, despite his initial attempt to offer an excuse for the omissions by saying he believed he did not have to list them because the charges were dropped. The Individual’s explanations for his omissions and misrepresentations do nothing to mitigate the concerns in this case. Security clearance holders and applicants for security clearances are expected to be honest with the DOE, regardless of whether they are embarrassed or afraid of the consequences. The Individual’s lack of candor calls into question whether he can be relied on to be forthcoming with the DOE in the future.

Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing*, Case No. VSO-0499 (2002). In most cases in which Hearing Officers have concluded that doubts about an individual’s judgment and reliability raised by evidence of

falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the time period has allowed individuals to establish a pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, Hearing Officers have generally determined that the individual was not eligible to hold an access authorization. *See Personnel Security Hearing*, Case No. VSO-0448 (2001) (11 months not sufficient to mitigate four year period of deception); *Personnel Security Hearing*, Case No. VSO-0327 (2000) (less than one year of truthfulness insufficient to overcome long history of misstating professional credentials).

In the present case, the fact that each of the Individual's witnesses believes him to be a generally honest and trustworthy person is a factor in the Individual's favor. On the other hand, the DOE has known about the Individual's falsifications and omissions on the QNSP for a relatively short time – about one year as of the date of the hearing. Accordingly, the Individual has not yet established a significant pattern of responsible behavior. Therefore, based on the recency of the DOE's knowledge of the falsifications and omissions, and the short amount of time the Individual has had to demonstrate a subsequent pattern of responsible behavior, I find that the Individual has failed to resolve the security concerns set forth in the Notification Letter under Criterion F regarding his falsifications and omissions on the March 2007.

B. Criterion K – Illegal Drug Use

It is beyond dispute that use of illegal drugs raises security concerns under Criterion K. *See* Adjudicative Guidelines, Guideline H, ¶ 24 (“Use of an illegal drug ... can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.”); *see also Personnel Security Hearing*, Case No. VSO-0113, 25 DOE ¶ 85,512 (1995) (“The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is further the concern of the DOE that the drug abuser might pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information.”). Given the Individual's admission of his past marijuana use, which occurred as recently as 2006, the LSO was justified in invoking Criterion K. The remaining question is whether the Individual has presented sufficient information to fully resolve the security concern raised by his past marijuana use.

The Individual admitted that he used marijuana throughout his high school years, and used it again once in 2006. However, he stated that he no longer uses any illegal drugs because he is focused on his college studies and his professional development. He stated that he has too much going for him in his life and does not want to jeopardize his goals. He no longer associates with anyone who uses illegal drugs and is not subject to the same negative influences which affected him in high school.

The evidence in this case supports the Individual's statements that his marijuana use was limited to the time period he stated and he has not used illegal drugs in the recent past. Each of the witnesses appeared to know the Individual well and I believe they testified honestly and candidly. Each of the witnesses was aware that, with the exception of the one-time use in 2006, the Individual's marijuana use took place primarily when he was a teenager in high school. The

Individual's mother, brother, and cousins interact with him fairly regularly and have seen no signs, either on the Individual himself or in his home or car, indicating that he uses illegal drugs. They also stated that the Individual does not associate with anyone who uses illegal drugs; rather, he spends most of his time studying or working. Finally, the Individual's co-worker believed the Individual was honest with him when he said he had not used marijuana since several months before starting his current position in early 2007. He and the Individual's mentor also saw no signs in the Individual's work performance that would indicate that he may be a user of illegal drugs.

Based on the foregoing, I find that the Individual has presented sufficient evidence to resolve the Criterion K concern raised by his past use of marijuana.

C. Criterion L – Unusual Conduct

Criterion L concerns conduct tending to show that the Individual was “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.” 10 C.F.R. § 710.8(l). It is well-established that criminal conduct raises doubts as to an individual's honesty, reliability and trustworthiness, and raises security concerns under Criterion L. *See* Adjudicative Guidelines, Guideline J, ¶ 30 (“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.”); *see also Personnel Security Hearing*, Case No. TSO-0507 (2007). Based on the evidence in the record regarding the Individual's pattern of arrests or other legal incidents, the LSO had ample grounds to invoke Criterion L. The issue remaining is whether the Individual has adequately mitigated the security concerns.

In this case, I cannot conclude that the Individual has mitigated the Criterion L concerns. The Individual has a now 13-year pattern of incidents involving police citations, arrests, and detentions. The most recent incident, the April 2009 DWI arrest, occurred while the Individual was in the midst of this administrative review proceeding, a mere three months prior to the hearing. His past behavior, as chronicled by the Criterion L concerns, has been questionable, but could possibly have been attributed in part to lack of maturity. The recent DWI arrest, however, is an extraordinary lack of judgment from someone who, by all accounts, should have known better.

As mentioned above under Criterion F, when an individual demonstrates a pattern of irresponsible conduct which calls into question his judgment and reliability, our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating those concerns. *See Personnel Security Hearing*, Case No. VSO-0499, 28 DOE ¶ 82,850 (2002). Guideline J of the Adjudicative Guidelines also sets forth various circumstances which may serve to mitigate security concerns raised by criminal behavior. The circumstances include the passage of time, the unlikelihood that the behavior will recur, and remorse. Guideline J, ¶ 32. In this case, the Individual testified that he is remorseful for his conduct, and that testimony was corroborated by several witnesses who stated that the Individual was deeply affected by his DWI arrest. It is also clear from the testimony, that some of the other behavior cited in the

Notification Letter under Criterion L was the product of immaturity and youthful indiscretion, which the Individual is trying to move past. Nonetheless, given the recency of the DWI arrest, I cannot find that the Individual has had enough time to establish a pattern of responsible behavior. In addition, while I believe that the Individual has been deeply affected by the DWI arrest and its consequences, I am not fully convinced that the lack of judgment he displayed on the night of the DWI arrest will not recur. Therefore, I must find that the Individual has failed to resolve the Criterion L concern.

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria F, K and L. I find sufficient information in the record to resolve the Criterion K concern raised by the Individual's past marijuana use. However, I find insufficient information in the record to resolve the Criteria F and L concerns. Therefore, I cannot conclude that granting the Individual's request for an 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). Accordingly, I find that the Individual's request for access authorization should not be granted at this time.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: September 4, 2009