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October 27, 2009

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 6, 2009

Case Number: TSO-0731

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ (or "security clearance") 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." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored.

I. Background

The individual has been employed by a Department of Energy (DOE) contractor since 1985 in a position that requires him to hold a security clearance. In the spring of 2006, the individual began experiencing hallucinations and on July 6, 2006, admitted himself into a hospital for a psychiatric evaluation. Ex. A at 4-6. Reports from an attending physician dated July 6 and 7, 2006, (medical reports) revealed that the individual had been severely abusing cocaine for two and one-half years. Ex. D; Ex. E. These medical reports prompted the local DOE security office (LSO) to review the individual's most recently executed Questionnaire for National Security Positions (QNSP) dated November 19, 2004, in which he certified that he had never illegally used a controlled substance or prescription drug. (Ex. G) He further certified that he had never used a controlled substance while possessing a security clearance. *Id.*

Based on concerns arising from the medical reports and the individual's responses on his QNSP, the LSO conducted a Personnel Security Interview (PSI or Ex. A) with the individual in July 2008. The PSI did not resolve the concern regarding the individual's cocaine use or discrepant information on his QNSP. Accordingly, on March 13, 2009, the LSO sent 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 an attachment to the Notification

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a).

Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (k) (hereinafter referred to as Criteria F and K respectively).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On April 6, 2009, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the time prescribed in the regulations. At the hearing, the individual presented his own testimony and that of his wife. In addition to the testimonial evidence, the DOE submitted eight exhibits into the record and the individual tendered ten exhibits. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE Counsel during this proceeding constitute the agency’s exhibits and shall be cited as “Ex.” Documents submitted by the individual shall be cited as “Ind. Ex.”

II. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria, Criteria F and K, as bases for suspending the individual’s security clearance. With regard to Criterion F, the LSO cites statements that the individual made during a July 17, 2008, interview with a DOE representative in which, the individual admitted that: (1) he began using cocaine in May 2004 when he was golfing, (2) he answered “no” to question #24 of his QNSP Part 2 dated November 19, 2004, because he did not want to admit that he was a cocaine user; (3) he lied because he never used cocaine at work and thus never felt that it was relevant, (4) he should have answered “yes” to question #24 of his QNSP Part 2 dated November 19, 2004, but thought that his security clearance would be suspended or he would lose his job, (5) he did not deliberately falsify his QNSP, but stated that it might be an oversight, and (6) he may have gotten the dates mixed up and cannot state with certainty the exact date that he began using cocaine. Ex. H. As for Criterion K, the LSO relies on the following information: (1) during his July 2008 PSI, the individual stated that he used cocaine after being granted a DOE access authorization³, (2) the individual used a line of credit in the amount of \$18,000 to purchase cocaine which contributed to the Chapter 7 bankruptcy⁴

² Criterion F relates to information that a person “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive 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 thru 710.30.” 10 C.F.R. § 710.8 (f). Criterion K relates to information that a person has “[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.” 10 C.F.R. § 710.8(k).

³ During a July 2008 PSI, the individual reported that he began using cocaine in May 2004, but later claimed that his first use occurred while on a golfing trip in March 2005. Ex. A at 52; Tr. at 69.

⁴ The department has not raised the individual’s bankruptcy as a security concern under Criterion L. I therefore make no findings regarding the individual’s financial responsibility.

that he filed in May 2008, (3) records from an attending physician indicate that on July 6, 2006, the individual tested positive for cocaine and revealed evidence of polysubstance abuse, and (4) records dated July 7, 2006, indicate that the individual had severely abused cocaine for two years. *Id.*

I find that the information set forth above constitutes derogatory information that raises questions about the individual's honesty under Criteria F and his illegal drug use under Criterion K. The security concerns associated with Criteria F and K are as follows. With regard to Criterion F, substantial security concerns are raised when an individual is not forthcoming with security personnel. "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." *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 (*Revised Adjudicative Guidelines*). As for Criterion K, the use of an illegal drug is a security concern both because it may impair an individual's judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations. *See Id.* at Guideline H.

III. Findings of Fact

The individual began using cocaine while possessing a DOE security clearance. Tr. at 37. Sometime in early 2006, the individual became "delusional" and began to experience hallucinations which resulted in several calls to the police. Ex. A. at 4-5. On two separate occasions, the individual thought that he saw someone in the woods behind his house wearing night-vision goggles. *Id.* The individual called the police and when the officer arrived, they both attempted to find the person, but the officer found no one.⁵ *Id.* Shortly thereafter, the individual began to "hear things" and only weeks after he reported seeing someone wearing night-vision goggles, the individual called the police to report that there were "remote-controlled vehicles" that were spying on him from his attic. *Id.* When the police arrived, they found no such vehicles. *Id.* In his next call to the police, the individual informed them that he had caught one. *Id.* When the police arrived for a third time, they found no vehicles but promptly escorted the individual to the hospital to get psychiatric help. *Id.*

The individual remained in the hospital for the evening and on July 6, 2006, decided to admit himself for psychiatric evaluation. Ex. A at 4-6. That same day, the individual reported to his supervisor that he would be in the hospital for a mandatory four-day stay. As a precaution, the individual's clearance was immediately suspended and remained in a suspended status while the individual was on a 90-day medical leave. Ex. A at 4; 6. On July 6, 2006, the individual was evaluated and diagnosed as suffering from Psychosis, not otherwise specified, polysubstance

⁵ The individual now admits that the person he thought he saw was a "manifestation" of his mind. Ex. A. at 5. He also admits that he used cocaine prior to each of these episodes. *Id.* at 8.

abuse and Personality Disorder, not otherwise specified.⁶ Reports from an attending physician also revealed that the individual had been severely abusing cocaine for two and one-half years. Ex. D; Ex. E.

IV. Regulatory Standard and the Individual's Burden

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all 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). There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the 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 continuance or recurrence; and other relevant and material factors.

After due deliberation, it is my opinion that the individual's access authorization should not be restored because I cannot conclude that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest.

⁶ There are several references in the record to other mental health issues that the individual suffered from. Most recently, in June 2008, the individual was diagnosed as suffering from polysubstance abuse and Bipolar Disorder. Ind. Ex. 10. Since the agency did not raise these diagnoses as security concerns under Criterion H, I make no findings with regard to any of these possible mental health illnesses or conditions that are apart of this record.

10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Criterion F – Falsification

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 (1995).*⁷

Cases involving verified falsifications or misrepresentations are nonetheless difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. *See id.* Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the misrepresentation or false statement 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. *Id.*

After reviewing the evidence and testimony in the record, I find that the individual has not mitigated the security concerns involving his falsification. As in initial matter, I find that the individual has not offered a consistent or convincing explanation for his falsification. At his July 2008 PSI, the individual admitted that he first used cocaine in May 2004. Ex. A at 52. In his July 2008 PSI, he stated that he did not disclose his cocaine use to DOE because he did not think that it was relevant. Ex. A at 58. He also stated the he did not disclose the information because he thought that he would lose his job. *Id.* At the hearing, the individual offered a different explanation for his failure to report his cocaine use. The individual testified that his falsification was an oversight and that he mixed up the dates. Tr. at 42-46. He admitted at the hearing that he had used cocaine but denied using the illegal drug at the time he completed the QNSP in November 2004. *Id.* at 41. He also maintained that he never used cocaine prior to the spring of 2005. *Id.* at 44. The individual explained that during his July 2008 PSI, he reported May 2004 as the date of his first use because he was “absolutely sure” that he was “40-years-old” and that it was the “spring-time” when his first use occurred. *Id.* at 42. He also claims that in calculating the date of his first use, he took his age at the time of the July 2008 PSI, 44, and subtracted four years back to 40, which gave him the year 2004. *Id.* at 43. Since he knew that he only went golfing in the spring, he reported that he first used cocaine in May 2004. *Id.* The individual maintained that he forgot to factor his birthday into his calculations and noted that in May 2004, he was only 39-years-old. *Id.* at 44.

Given the evidence and testimony in record, I am not convinced that the individual's inconsistencies are simply a matter of miscalculation. First, the individual did not voluntarily disclose his falsification. He did not report his cocaine use until he admitted himself into the hospital and there is no evidence in the record that the individual would have reported the

⁷ 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>.

derogatory information otherwise. Second, during the period that the individual maintained the falsification, he was a mature adult. Thus, there is no basis for ascribing this falsification to immaturity. Third, the individual has held a security clearance for many years. He had many opportunities during the time he abused cocaine to disclose the truth to the DOE, and as a clearance-holder, was well aware of the consequences of non-disclosure. Despite that knowledge, even after DOE discovered that the individual had used cocaine extensively, the individual offered inconsistent statements to explain his reason for withholding this information from the DOE. *See Personnel Security Hearing*, Case No. TSO-0415 (2007) (an individual's willingness to conceal information from the DOE in order to avoid adverse consequences is an action that is simply unacceptable among access authorization holders) Fourth, the individual admitted during his July 2008 PSI that he intentionally failed to disclose his drug use because he knew that he would lose his job. Ex. A at 58. Finally, during the two-year period that the individual maintained the falsehood, the individual was vulnerable to blackmail, pressure or coercion. For all of the foregoing reasons, I find that the individual has failed to mitigate the security concerns raised by Criterion F.

B. Criterion K – Cocaine Use

As mentioned above, the individual's use of cocaine gives rise to a Criterion K concern. When resolving the question of the individual's eligibility for access authorization, in addition to the applicable factors prescribed in 10 C.F.R. § 710.7(c), I must also consider the applicability of the mitigating conditions⁸ set forth under Guideline H of the *Revised Adjudicative Guidelines*.

In this instance, there are a number of factors that weigh heavily against the individual. At the outset, the individual provided conflicting testimony regarding the motivation for his drug use. At his July 2008 PSI, the individual stated that he began using cocaine because of his hectic work schedule. Ex. A at 13; *see also*, Tr. at 61. At the hearing, however, the individual provided a different explanation. The individual testified that in early 2006, he discovered disturbing images on his son's computer. *Id.* at 16; 62. Shortly thereafter, he and his wife soon discovered that his son was bi-sexual, which caused him to be "very upset." *Id.* at 17. The individual testified that his friend⁹ was present and offered him and his wife cocaine to help them deal with the "trauma."¹⁰ *Id.* at 17; 38. The individual stated that his friend took out "three lines of

⁸ In this instance, I specifically consider mitigating conditions set forth in sections 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; 26(b): a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) an appropriate period of abstinence; and 26(d): satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional. *See* Guideline H of the *Revised Adjudicative Guidelines*. The remaining mitigating conditions have no application to the facts of this case.

⁹ The individual met a gentleman at his son's Cub Scout den. Ex. A at 13. They quickly became friends and began golfing on several occasions. *Id.*

¹⁰ In the medical reports dated June 6-7, 2006, the attending physician noted that the individual was upset about his son's sexuality. Ex. F at 1; Tr. at 38.

cocaine” and placed them on the table, however, neither he nor his wife used it. *Id.* In fact, he maintained that he and his wife were both “shocked” that their friend used cocaine and were unaware of his use prior to that day. *Id.* Two weeks later, the individual used cocaine with the same friend while golfing. *Id.* at 69. Throughout the hearing, the individual explained that discovering his son’s sexuality put him “over the edge” and maintained that it was the impetus that propelled him to use cocaine. *Id.* at 61-62. I note that during the hearing, it remained a difficult subject for the individual to discuss. Tr. at 62. However, based on his inconsistent statements, I am not convinced that the “trauma” that the individual allegedly experienced as a result of discovering his son’s sexuality precipitated his cocaine use. Second, the individual’s medical records show that he has severely abused cocaine. Ind. Ex. 2. In addition, the individual testified that he had “issues” with cocaine and admitted that he could not go one week “without thinking about it or obtaining it, or in some way, shape or form, procuring it and doing it.” Ex. A at 58; Tr. at 75. At the hearing, the individual offered a report from his psychiatrist¹¹ dated July 1, 2009, in which she opined that the individual’s drug abuse was an “isolated incident.”¹² Ind. Ex. 10. However, the individual’s medical records show severe cocaine abuse for at least two years. Therefore, I find that the individual’s cocaine use was not an isolated incident. *See* Mitigating Condition 26(a) of the *Revised Adjudicative Guidelines*. Third, while the individual has presented evidence of participation in psychiatric treatment,¹³ there is no evidence of his satisfactory completion of a drug treatment program. *See id.*, Mitigating Condition 26(d). In fact, according to the individual’s continuing care plan, dated July 8, 2008, the individual will not be rehabilitated from his drug use until he has complied with the plan for a minimum of two years from the date that it was issued. Ind. Ex. 6.

The individual has presented mitigating factors that must be considered. I find that the individual has testified credibly that three years have passed since his last cocaine use. Tr. at 59. He has also presented negative drug test results, with his most recent results dated April 2009. Ind. Ex. 1. I further find that the individual testified credibly that he no longer associates with individuals that use drugs.¹⁴ *See* Mitigating Condition 26(b)(1) of the *Revised Adjudicative Guidelines*. The individual’s wife testified that he appears to be more sociable with his family and has more interaction with his children. Tr. at 29. She also maintained that they are financially stable.¹⁵ *Id.* at 32.

¹¹ The individual’s psychiatrist is an 88-year-old who specializes in drug and alcohol abuse. Ex. A. at 17.

¹² I can only accord neutral weight to the psychiatrist’s report because she was not present to testify. Ind. Ex. 10.

¹³ The individual has been in psychiatric treatment since November 2006 and has attended approximately 30-40 sessions. Ind. Ex. 4; Tr. at 28. In a June 17, 2008, report, the individual’s psychiatrist reported the individual’s current diagnosis as Bipolar Disorder, Hypomanic, Controlled, and noted in a July 1, 2009, report, that the individual has an “underlying emotional condition” which has been successfully helped with medication. Ind. Ex. 4; 10. Thus, it appears that the individual’s psychiatric treatment has primarily addressed his mental health concerns.

¹⁴ Tragically, the individual’s friend who provided him with the cocaine committed suicide in February 2008. Tr. at 25. The individual maintained that he never used cocaine with anyone else, nor did anyone else provide him with cocaine. Tr. at 78; Ex. A at 56.

¹⁵ The individual’s wife acknowledged that the individual used part of an \$18,000 line of credit to purchase cocaine, but maintains that the debt was discharged in their May 2008 bankruptcy. Tr. at 31-32; 63-68.

However, while it is a positive fact that the individual has been abstinent from cocaine since July 2006, that alone is not sufficient to allay my concerns. Given the individual's extensive history of illegal drug use, his failure to complete a drug treatment program, and my lingering doubts about his candidness with regard to the circumstances surrounding his drug use, I cannot conclude that the risk that the individual will again use illegal drugs is low. Consequently, I cannot find that the individual has resolved the Criterion K security concern.

VI. Conclusion

Based on the foregoing, I find that the individual has failed to bring forth sufficient evidence to mitigate the security concerns under Criteria F and K. After considering all of the testimony and evidence, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Avery R. Webster
Hearing Officer
Office of Hearings and Appeals

Date: October 27, 2009