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**October 6, 2009**

**DECISION AND ORDER**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: April 29, 2009

Case Number: TSO-0746

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization<sup>1</sup> 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 should not be granted an access authorization at this time.

**I. Background**

In 2006, the individual began working for a Department of Energy (DOE) contractor, and the contractor requested that DOE grant the individual a security clearance. He completed a Questionnaire for National Security Positions (QNSP) in May 2007. A routine background investigation disclosed some derogatory information. In November 2008, the local security office (LSO) conducted a personnel security interview (PSI) with the individual. That interview did not resolve the security concerns and in March 2009, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (March 20, 2009). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (f), (k), and (l) (Criteria F, K, and L).

DOE invoked Criterion F because the individual denied in his QNSP that he used or purchased illegal drugs within the past seven years, and denied that he had any financial delinquencies.<sup>2</sup> However, the individual later admitted using marijuana daily from 1988 until

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<sup>1</sup> Access authorization (or "security clearance") 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).

<sup>2</sup> Criterion F concerns information that the individual has "misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive Positions, Personnel Qualifications Statement, a Personnel Security interview, written or oral statements made in response to an official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . ." 10 C.F.R. 710.8 § (f).

January 2003, and he also admitted to having \$20,000 in financial delinquencies. DOE invokes Criterion K when the agency is in the possession of information indicating that the individual has trafficked in, sold, transferred, possessed, used, or experimented with a drug or controlled substance except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine or as otherwise authorized by Federal law. This is based on the individual's admission during the PSI that he used marijuana daily from 1988 to 2003. With respect to Criterion L, the Notification Letter refers to derogatory information that raises concerns about the individual's honesty, reliability and trustworthiness.<sup>3</sup> The DOE invoked this criterion because of the individual's financial delinquencies and alleged financial irresponsibility.

In a letter to DOE Personnel Security on April 17, 2009, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing the individual, who was not represented by counsel, testified on his own behalf and called five character witnesses. DOE counsel had no witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the parties during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." DOE exhibits are numbered, and the individual's exhibits are lettered.

## II. Analysis

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). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. 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).

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

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<sup>3</sup> Criterion L is concerned with information in the possession of DOE that indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy or which furnish reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. 10 C.F.R. § 710.8 (l).

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, I find that the individual's access authorization should not be granted at this time because I cannot conclude that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

In 1984, the individual was arrested and charged with possession of a controlled substance when the police found marijuana in the vehicle he was riding in. PSI at 72-75. In 1988, at the age of 26, the individual began smoking marijuana daily and buying the drug every three days. *Id.* at 58-66, 78-79, 101-103. He smoked on his way home from work, and also at home while outside working in the yard. The individual was a seasonal construction worker, and he also coached and provided financial support to youth athletic teams in his community. However, he frequently did not have enough money to pay all of his bills, and he began to accumulate debt and fall behind on his property taxes. He purchased two vehicles but stopped paying for them when he did not have the money to continue payments. *Id.* at 19-21. Between 2001 and 2003, he spent \$2000 annually on trips with local youth sports teams. PSI at 30 37-38, 44. The individual supported his two adult children by purchasing items for them and by giving them money for their debts, including house payments and maintenance. *Id.* at 21-23, 31-36. He paid their debts before he paid his own, and he only paid the minimum required payment on his accounts. Ex. 5 at 10. He stated that he used marijuana in part to forget about his financial delinquencies, but also admitted that his purchase of marijuana adversely impacted his finances and that he was psychologically dependent on marijuana. PSI at 86-87. His spouse complained daily about his drug use. *Id.* at 81-82. His regular use of marijuana also damaged his gums, causing him to wear dentures.

As the individual matured, he decided to pursue a career that required less physical exertion, and that would also offer him a pension. He earned a commercial drivers license (CDL) and in 2006, he began to work for the contractor. In May 2007, the individual completed a QNSP. Ex. 4. In the QNSP, he denied using illegal drugs, failing to pay property taxes, and failing to pay any judgments against him within the previous seven years. Ex. 4 at 31-33. He also denied that he was over 90 days delinquent on any debts. *Id.* at 33.

A routine background investigation disclosed that the individual had several outstanding debts that were delinquent, and that he had used marijuana within the previous seven years. Ex. 5. At a PSI in November 2008, the individual admitted that he had last used marijuana in 2003, only four years prior to completing his QNSP. PSI at 91-93. He also admitted that he was delinquent on his property taxes, that he had stopped making payments on two vehicles he had purchased, and that he was over 90 days delinquent on

several accounts. PSI at 32. In addition, he had just returned from a vacation that cost \$1,500. PSI at 35-37. The individual admitted that he deliberately omitted information about his drug use and financial difficulties because he was anxious to keep the job with the contractor. PSI at 93-95.

## **B. DOE's Security Concerns**

Criteria F and L set forth security concerns regarding personal conduct, honesty, and reliability. As regards Criterion F, the individual deliberately provided false answers on a QNSP, which raises questions about his reliability and trustworthiness. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Assistant to the President for National Security Affairs (December 29, 2005) (Guidelines), Guideline E, ¶ 18. Under Criterion L, the LSO alleges that the individual has engaged in unusual conduct as regards his finances because of his substantial financial delinquencies, some caused by his use of marijuana in the past. The individual has admitted this conduct, and the charges under Criterion L are also validated. Guideline F, ¶ 18. The use of illegal drugs, one of the security concerns of Criterion K, can lead to the exercise of questionable judgment. Guideline G, ¶ 21. The individual admitted previous marijuana use during a PSI, and therefore the charge under Criterion K is also valid.

## **C. Hearing Testimony**

### **1. The Individual**

The individual testified at the hearing that he last used marijuana in 2003. Tr. at 76. When he was young, he was a seasonal worker who never earned much money. He paid his bills late, and some of his financial problems occurred because he purchased marijuana instead of paying his bills. However, as he grew older, he realized that he needed a job that was less physically demanding. *Id.* at 77-78. He also came to realize that he should make changes in his life, and he began attending church regularly. *Id.* at 75-76. He was very happy to get a job with the contractor and, when he filled out the QNSP, he lied about his drug use and financial situation because he was scared of losing such a good job. *Id.* at 77-80. He then felt guilty and, during his PSI, he disclosed his past marijuana use. *Id.* at 80-82.

The individual also provided information about his November 2008 vacation. Although the trip was expensive, it was not a pleasure trip but rather important family business. His father lived and owned property abroad. The father asked the individual and his son to visit the father in order to complete certain business transactions that would keep the property in the hands of the family. *Id.* at 83. The individual also explained that his trips with the athletic team were not strictly for pleasure, but were intended to provide the children in his rural community with exposure to the outside world. *Id.* at 84-85. In addition, his finances have improved because his children, who he previously assisted financially, now have good jobs and are self-supporting. *Id.* at 86. He and his wife have examined their finances and have begun to repay their creditors. *Id.* at 82.

## **2. Character Witnesses**

At the hearing, the individual presented the testimony of five character witnesses: his pastor, his manager, his wife, his sister-in-law, and a neighbor. Tr. at 11-73.

The individual's pastor testified that he has known the individual for 15 years, and knew that the individual was doing drugs, although he had not seen him drink or smoke marijuana. He observed that the individual socialized with people at the church and had matured emotionally and spiritually. He considered the individual to be trustworthy. *Id.* at 12-29. The individual's manager considered the individual to be a good employee, and he had not seen any signs of drug or alcohol use. His supervisor testified that he was a trustworthy and responsible employee. *Id.* at 54-55.

The neighbor and sister-in-law both confirmed that they had not seen the individual use drugs and considered him a good, trustworthy person. *Id.* at 33, 40. The neighbor trusted him to transport her son with the local youth athletic team. *Id.* at 33, 37.

The individual's wife of 24 years testified that she has not seen her husband smoke marijuana in the last seven years, and that he stopped doing drugs so that he could get a better life. They started going to church and he decided to become a better person and not hang around with people that smoked marijuana. *Id.* at 58-60. They went through counseling with their pastor. They had ignored bills in the past when they did not have the money to pay them, but now they are able to pay their bills and have started automatic withdrawals for repayment. *Id.* at 61. She also described the improvement in their finances now that their children have good jobs and can support themselves instead of relying on their father to help them. *Id.* at 61, 70. When questioned about her husband's apparent falsification on his QNSP, she stated that her husband was so happy to get the job with the contractor that he was afraid that he would not be hired if he told the truth about his previous drug use and his finances. *Id.* at 64. She confirmed that the 2008 trip was actually to take care of family business and was not a pleasure trip. *Id.* at 72-73.

## **D. Mitigation of Security Concerns**

### **1. Criterion F – Falsification**

In a number of decisions, DOE Hearing Officers have considered the implications of prior falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to admit his falsifications, *compare Personnel Security Hearing, Case No. VSO-0037 (1995), affirmed (OSA, 1996)* (voluntary disclosure by the individual) with *Personnel Security Hearing, Case No. VSO-0327 (2000), affirmed (OSA, 2000)* (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individuals' admission. *See Personnel Security Hearing, Case No.*

TSO-0707 (2009) (individual mitigated Criterion F concern by self-reporting recent drug use).<sup>4</sup>

The decision of a Hearing Officer in a Part 710 case is a predictive assessment, in this case an assessment of the likelihood that the individual will engage in dishonest or untrustworthy behavior in the future similar to any past falsification. My common-sense impression of the individual, formed over the course of this proceeding, is that he is an honest person who was so anxious to change his life with a good, steady job that he deliberately omitted information he thought would cost him his job. During his PSI, he admitted marijuana use and financial delinquencies in the opening minutes of the interview, before the interviewer even mentioned any issues with drugs or finances. PSI at 8. At the hearing, he displayed remorse for his behavior, and I conclude that this behavior is unlikely to recur. Nonetheless, I cannot find that this security concern has been fully mitigated. The individual did not come forward voluntarily to admit his falsifications in the 18 months between the QNSP and the PSI. *Compare Personnel Security Hearing, Case No. TSO-0628 (2008) (falsification mitigated by self-reporting drug use to LSO); Guideline E, ¶ 17 (a).* Less than a year has transpired since he admitted the falsification, and that is insufficient time to establish a pattern of honest behavior. Therefore, considering the totality of the facts in this case, I conclude that the individual has not fully mitigated the Criterion F security concern.

## **2. Criterion K – Drug Use**

I find that the individual has mitigated the security concerns associated with his previous drug use. The individual has provided evidence of his intent not to abuse drugs in the future. Guideline H, ¶ 26 (b). First, there was credible testimony in the hearing that the individual no longer associates with people who use drugs, and that he avoids environments where drugs are used. He now spends a lot of his free time at church and with his family. He has also abstained from the use of marijuana for six years at the time of the hearing. *Id.* at ¶ 26 (b) (3). Based on the foregoing, I find that the individual's illegal drug use is unlikely to recur. *Id.* at ¶ 26 (a).

In summary, the individual has convinced me through his demeanor and testimony and that of his witnesses that there is little likelihood that he will use illegal drugs again. He has demonstrated his intent not to abuse drugs in the future by severing his ties to associates who used drugs and becoming involved in his church. The witnesses testified credibly that the individual has reformed his behavior and is now reliable and trustworthy.<sup>5</sup> Thus, I conclude that the individual has mitigated the Criterion K security concerns in the Notification Letter.

## **3. Criterion L- Unusual Conduct**

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<sup>4</sup> Decisions issued by the Office of Hearings and Appeals 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>.

<sup>5</sup> I note that DOE did not offer evidence of a diagnosis of substance abuse or dependence.

The Notification Letter mentioned several items of unusual conduct that raise a security concern, all relating to the individual's alleged financial irresponsibility. Our cases have held that an individual must demonstrate a sustained new pattern of financial responsibility for a period of time that is sufficient to demonstrate that the recurrence of the past pattern is unlikely. *Personnel Security Review*, OHA Case No. TSO-0732 (July 20, 2009). I conclude that the individual has mitigated the security concern regarding his finances for the following reasons. The individual and his wife have initiated a good faith effort to repay their creditors. Guidelines, ¶ 20 (d). In addition, the testimony at the hearing explained that the November 2008 vacation was actually a trip related to family business, completed at the request of the individual's father. At the hearing, the individual produced documentary evidence that he and his wife have embarked upon repayment plans with their creditors. Tr. at 85; Exs. B-C. They are very committed to staying current with their debtors and living responsibly. Further, their children have moved out of the house, and no longer require their financial support. In summary, testimony at the hearing produced clear indications that the problem is being resolved, and is unlikely to recur. Guideline F, ¶ 20 (c). Therefore, I find that the individual has mitigated the security concerns of Criterion L.

### **III. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (f), (k), and (l). After carefully reviewing the testimonial and documentary evidence in a common-sense manner, I find that the individual has presented adequate mitigating factors for the concerns under Criteria K and L. He has not, however, mitigated the security concerns advanced under Criterion F. Thus, in view of the criteria and the record before me, I cannot find that granting 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 granted at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: October 6, 2009