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**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

In the Matter of Personnel Security Hearing)
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Filing Date: September 1, 2011)
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Case No.: TSO-1103

Issued: February 28, 2012

Hearing Officer Decision

Valerie Vance Adeyeye, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual’s access authorization (“security clearance” or “clearance”) should be restored.¹

I. Background

The individual was hired by a Department of Energy (DOE) contractor in 2009, and was granted a security clearance at the request of his employer. In September 2010, the individual was arrested for misdemeanor child abuse. In October 2010, the LSO conducted a Personnel Security Interview (PSI) with the individual, but that interview did not resolve the security concerns. The LSO suspended the individual’s clearance in February 2011, and the LSO informed the individual that it had received derogatory information that had created a doubt regarding his eligibility for access authorization. See Notification Letter (June 2011). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (l) (Criterion L).²

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 DOE invokes Criterion L when it is in possession of information that indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest,

The Notification Letter refers to the following derogatory information that raised concerns about the individual's honesty, reliability and trustworthiness: (1) during a PSI, he discussed an incident where he hit his eight-year-old daughter while riding in a car, the child's mother filed a protection order against him, and he was arrested and charged with child abuse; (2) the court issued a protection order against him arising from that incident; and (3) the criminal charge had been transferred to the local grand jury after a January 2011 hearing and was not yet resolved.

In July 2011, the individual sent a letter to DOE Personnel Security and 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 testified on his own behalf and called three additional witnesses. DOE counsel called 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."

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 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. See also *Revised Adjudicative Guidelines for*

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).

Determining Eligibility for Access to Classified Information, The White House, (December 19, 2005) (Guidelines). After due deliberation, I find that the individual's access authorization should be restored because I conclude that such a restoration 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 2002, the individual fathered a child with his high school girlfriend. PSI at 8. She dropped out of school and after paternity was established, the individual paid child support. The young parents had a very strained relationship. In 2004, the individual graduated from high school and entered the military. Ex. 9; PSI at 68. While he was in the military, the individual communicated with the child's great-grandmother to arrange visitation. Tr. at 72. When the great-grandmother died, the individual tried unsuccessfully to work on a parenting plan with the mother. *Id.* at 73-75. When the individual left the military and returned to his hometown, the couple entered into a visitation agreement whereby they would exchange the child at the local police department. *Id.* at 76. However, despite the agreement, they often argued over visitation. According to the individual, the mother began turning the child against him and his family. *Id.* at 79-80. At various times, the individual concluded that the daughter was disrespecting her elders. PSI at 8.

In 2009, the contractor hired the individual and he was granted a security clearance. PSI at 66. One day in August 2010, he picked his daughter up for a scheduled visitation period. According to the individual, while driving to his father's home the child became unruly and disrespectful. PSI at 8-10; Tr. at 82-83. He tried to push her down in her seat but, when she kept "rising up" against him, he "backhanded" her two or three times. PSI at 9-10. At his father's house, his father noticed that the child had bruises on her face and the individual apologized to his daughter. *Id.* at 11. The next day he took the child to a sporting event where her mother and other family members were in attendance. One of the relatives noticed the bruise, and a male cousin and the mother's current boyfriend got enraged and attacked the individual. *Id.* at 11-13. The individual left and the mother took her child to the hospital.

As a result of the child's injuries, the mother filed for an Order of Protection against the individual in August 2010. Ex. 8. In September 2010, he was charged with child abuse and arrested. *Id.* The individual spent the night in jail and his father bailed him out. A hearing was scheduled for November 2010, but the prosecution could not proceed because it was unable to subpoena witnesses. Ex. 7. The prosecutor suggested that the individual's attorney talk to another prosecutor about pre-trial diversion. A new hearing was scheduled for January 2011. *Id.*

In January 2011, there was a preliminary court hearing on the criminal charges. The case was bound over to the grand jury so that the county could offer the individual a diversionary resolution to his case (probation followed by dismissal). Ex. 7. At a hearing in August 2011, the individual pled guilty to misdemeanor child abuse and signed a pre-trial diversion

agreement that would dismiss the charges against him after one year if there were no further criminal charges. Ex. 8.

B. DOE's Security Concerns

Under Criterion L, the LSO alleges that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. 10 CFR 710.8 (l). The unusual conduct in this case includes criminal behavior. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. It calls into question a person's ability or willingness to comply with laws, rules and regulations. See *Guidelines*, Guideline J, ¶ 30. In the PSI, the individual acknowledged that he had struck his daughter and was charged with misdemeanor child abuse. Guideline J, ¶ 31(c). Thus, the LSO's concern is valid.

C. Hearing Testimony

The individual testified at the hearing and also called two colleagues and a second-level manager as character witnesses. Tr. at 12-65. All witnesses described the individual as an honest, truthful and trustworthy person. The individual's second level manager testified that he is a good employee, and that the individual promptly reported the arrest to him. *Id.* at 14-21.

The individual's colleagues are also involved with him in a local church where the individual is a regular volunteer and attends Bible study weekly. They described the individual as a responsible, committed volunteer who often works with the public in situations where people may become angry, yet always presents a calm demeanor while maintaining order. They consider him an excellent employee, courteous, friendly, and very personable. They have never seen him get angry. Both of the colleagues also serve as lay counselors in their church, and one is an ordained minister. The individual has participated in church counseling since the fall of 2010, and both colleagues are very impressed with his humility, commitment to learning more about his religion, and his growth in self-control. Tr. at 28-45, 46-65.

At the hearing, the individual described a tempestuous relationship with the mother of his child, whom he has known since childhood, and the actions he has taken to resolve the criminal charge against him. Tr. at 71-78, 100. He chose to resolve the criminal proceeding by pre-trial diversion, but this was delayed because the district attorney with authority to sign a pre-trial diversion agreement was not immediately available. Further, the local grand jury met only three times per year. In addition, the prosecutor was unable to locate the mother of the child from summer 2010 to summer 2011. *Id.* at 90. Nonetheless, the district attorney agreed to diversion after accepting a guilty plea to misdemeanor child abuse. The individual has had no contact with his daughter since the day after the incident, and he has not committed any new crimes. *Id.* at 93.

The individual is currently active in a local ministry with outreach to the needy. He also attended one anger management counseling session. *Id.* at 95. At the session he learned that, if he found himself in a stressful situation with his child, he should stop and relax and talk things through with her. He now understands that the child is caught in the middle and feels that she must choose one of her parents. *Id.* at 97-98. Initially, the individual wanted to set aside the “no contact” order and continue visitation with his daughter. However, he was convinced that the mother would become even more hostile if he tried to seek visitation. *Id.* at 98-103. As a result, he reluctantly decided that the best option for his daughter was to relinquish his parental rights as her mother had requested. He testified that he wanted to avoid conflict and minimize pressure on his child. According to the individual, he wants his daughter to grow up and learn for herself what kind of man he is, and then decide on her own when she turns 18 if she will have a relationship with him. Although this was a hard decision, he thought it was the right thing to do.³ *Id.* at 109.

D. Mitigation of Security Concerns

Although the individual admitted engaging in activity that resulted in a criminal charge, a review of the record and the Adjudicative Guidelines supports a finding of mitigation of the Criterion L security concern for the following reasons. First, I conclude that the behavior is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment. Guideline J, ¶ 32 (a). The August 2010 criminal charge is the result of a reprehensible action by the individual that cannot be excused or justified. However, I am convinced by his testimony and that of his witnesses that the individual understands the grave mistake he made and that he is unlikely to repeat the action. The individual has attended counseling and anger management sessions that have provided him with not only an understanding of the conflicts in his relationship with the mother of his child, but also with the tools to avoid further problems. According to very credible witnesses (who also serve as counselors and minister in his church) the individual has been a faithful volunteer for their active local ministry and he regularly attends Bible study. The witnesses testified about the lessons that the individual has learned about peacefully navigating his complicated relationship with the mother of his child. They also described an individual who can maintain a calm, professional demeanor in tense situations. That stability was evident during the hearing in the individual’s calm, straightforward responses to probing questions about his personal life. Further, the individual has agreed to comply with the mother’s request that the court terminate his parental rights, thereby precluding the possibility of visitation with his child. Thus, it is not likely that this situation would recur.

Second, the record contains evidence of successful rehabilitation, including the passage of time without criminal activity, remorse, a good employment record, and constructive community involvement. Guideline J, ¶ 32 (d). The criminal incident occurred over one year prior to the date of the hearing, and there is no evidence in the record of any additional criminal activity. The individual showed genuine remorse in his testimony, and the witnesses corroborated his remorse over striking his daughter. *Tr.* at 108. He has been a responsible and effective volunteer in a local ministry, and an exemplary employee, for over

³The mother has not yet signed the document terminating his parental rights because no one has been able to locate her. *Tr.* at 101, 109.

one year as of the date of the hearing. The criminal proceeding has been resolved by an agreement that, upon its successful completion, will result in dismissal of the criminal charges this year. Finally, the individual has agreed to terminate his parental rights and avoid any further contact with his child. The individual testified credibly that although he had misgivings about taking such a sad and final action, after much thought and anguish he chose this option for his daughter's sake, in order to spare her the problem of repeated conflicts between her parents. He will not have any further contact with the child while she is a minor. Therefore, I find that the security concerns under Criterion L have been fully mitigated.

III. Conclusion

As explained in this Decision, I find that the LSO properly invoked 10 C.F.R. § 710.8 (I). After a review of the record, I find that the security concerns of Criterion L have been resolved. Based on the record before me and considering the Adjudicative Guidelines and Criterion L, I 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 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.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: February 28, 2012