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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing)	
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Filing Date: April 2, 2013)	Case No.: PSH-13-0040
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Issued: July 25, 2013

Hearing Officer Decision

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. In January 2013, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about the individual’s falsifications and drug use. On March 5, 2013, the LSO sent a

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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding her eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f), (k) and (l) (hereinafter referred to as Criteria F, K and L, respectively).²

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented her own testimony and that of six witnesses. The DOE counsel did not present any witnesses. Both the DOE and the individual presented a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *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).

² Criterion F pertains to information that a person has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personal 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 through § 710.31." 10 C.F.R. § 710.8(f). Criterion K concerns 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(l). Finally, Criterion L relates to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . ." 10 C.F.R. § 710.8(l).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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 her 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 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.

B. Basis for Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites three potentially disqualifying criteria as bases for suspending the individual’s security clearance, Criteria F, K and L. To support its reliance on Criterion F, the LSO alleges that the individual deliberately omitted information from three Questionnaires for National Security Positions (QNSPs) (March 2002, June 2005 and November 2010) regarding her illegal drug use. From a security standpoint, false statements made 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* Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Adjudicative Guidelines*).

The LSO’s Criterion K concerns are predicated on the individual’s admission that she used marijuana two times between January and March 2009 and three to four times between 1999 and 2000. There are significant security concerns associated with past or current illegal drug usage. First, engaging in criminal conduct can raise questions about a person’s ability or willingness to comply with laws, rules and regulations. *See* Guideline H, *Adjudicative Guidelines*. Second, illegal drugs can impair a person’s judgment which, in turn, can raise questions about the

person's reliability and trustworthiness. *Id.* Moreover, from a common sense standpoint, a person's reliability and trustworthiness is questionable when he or she knowingly associates with persons who use illegal drugs.

As for Criterion L, the LSO alleges that the individual indicated, on a December 2012 Incident Report (IR), that she used marijuana, while holding a DOE access authorization, two times in March 2009. The LSO further alleges that the individual confirmed this information during a January 2013 PSI. She also admitted that she signed Security Acknowledgments on June 21, 2005 and March 8, 2002, which indicated that she understood that involvement with any illegal drug could result in the loss of her DOE access authorization. The individual's vulnerability to blackmail, exploitation, and duress calls into question the individual's judgment, reliability, trustworthiness and her ability to protect classified information. *See id.* at Guideline E.

IV. Findings of Fact

On December 12, 2012, the individual submitted an IR in which she reported that she used marijuana twice in 2009. In the IR, she admitted that she gave a false answer on her November 2010 QNSP when she answered "no" to the question regarding her drug use. The individual stated that she made a "terrible decision" in both using marijuana and then not admitting it on her QNSP. DOE Exh. 1. This information prompted a PSI of the individual in January 2013. *Id.* During this PSI, the individual stated that she came forward to report her marijuana use because "she wants to get the fact that she falsified her QNSP off of her conscience." *Id.* She also stated that she was considering applying for a new position with her employer that would require her to submit to a polygraph test. *Id.* The individual explained that she first used marijuana in high school and later used it three or four times between 1999 and 2000. She further explained that she answered her initial QNSP, in March 2002, falsely when she indicated that since the age of 16 or in the last 7 years she had not used marijuana, when in fact she turned 16 in June 1999. The individual stated that the reason she falsified this QNSP was that when she was 18, she took her QNSP to a friend's home to complete. *Id.* According to the individual, the friend's mother assisted her with the form by writing the answers on the form for her. *Id.* When they came to the illegal drug use question, she was afraid to tell her friend's mother that she had used marijuana and thus allowed the mother to answer the question "no," indicating that she had not used illegal drugs. In June 2005, the individual completed her second QNSP. She admitted that she again answered "no" to questions regarding whether she had used illegal drugs. She further admitted that she did not want to contradict the answers she had initially given on her first QNSP in 2002. *Id.*

In addition to the falsification on her three QNSPs, in her December 2012 IR and during her January 2013 PSI, the individual indicated that she had used marijuana, while holding a DOE access authorization. She also admitted that she signed Security Acknowledgments on June 21,

2005, and March 8, 2002, which indicated that she understood that involvement with any illegal drug could result in the loss of her DOE access authorization.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. 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)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

During the hearing, the individual explained that when she completed her first QNSP, in March 2002, she was 18 years old and did not have any knowledge about the process of obtaining a DOE access authorization, stating that a friend's mother offered to help her complete the security form. Transcript of Hearing (Tr.) at 120; Ind. Exh. A. She testified that, when completing the paperwork, her friend's mother asked her questions and filled in the information as they she went through the form. According to the individual, when she got to the questions concerning drug usage, the friend's mother stated, "I'm sure you haven't done any of this," marked "no" and moved on. *Id.* The individual testified that because her marijuana use was minimal in high school and because she had no future intention of ever using a controlled substance again, she regrettably accepted the mother's assumption of her past drug use. She testified that she was very naïve in 2002 and did not understand the seriousness of completing security forms. *Id.*

Regarding her June 2005 QNSP, the individual testified that she did not specifically recall completing the form, but stated that she was misguided in the early years of her employment. She explained that fellow employees advised her to be consistent on her security paperwork during her early years of employment with DOE. Again, she testified that she was young and did not grasp the seriousness of completing security forms. She further testified that she did not intentionally misrepresent information and that she was not embarrassed of the fact she had used marijuana in high school. Tr. at 130 and 131. Regarding her most recent QNSP, in November

³ Those factors include the following: 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 at the time of the conduct, the voluntariness of his 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 continuation or recurrence, and other relevant and material factors.

2010, the individual stated that at the time she completed the form, she was undergoing a great deal of stress in her life. She testified that she was in the midst of a difficult pregnancy and was experiencing nightmares and flashbacks of sexual abuse she had endured as a child. Ind. Exh. A. The individual further testified that before she completed her 2010 QNSP, she had endured a marriage with a verbally abusive and alcoholic husband. She testified that the marriage resulted in financial hardships for her that lingered on after the divorce. It was during this stressful point in her life, in early 2009, that she smoked marijuana on two occasions. The individual testified that at the time of her 2010 QNSP, she was stressed out and “scared” that she would lose her job if she acknowledged her past drug use. *Id.* at 140. She testified that she regrets her decision to omit her marijuana use. Ind. Exh. A. The individual began seeing a therapist in December 2011 to help her work through her stress and past trauma. After assessing her, her therapist diagnosed her with Post Traumatic Stress. According to the individual, after working with her therapist, she has made tremendous progress and now has a healthy means of dealing with her stress. *Id.*

During the hearing, the individual’s therapist testified that she has been treating the individual since December 2011, initially once a week and currently once a month, and diagnosed the individual with Post Traumatic Stress due to issues related to her childhood abuse. Tr. at 29 and 31. She stated that the individual shared with her the circumstances surrounding her falsifications on her three QNSPs, including her lack of understanding of the seriousness of her security paperwork. *Id.* at 27. The therapist testified that the individual is an “extremely reliable” person who does not have the ability to be coerced. *Id.* at 30. She further testified that the individual is a strong and resilient individual who has been through multiple traumas in her life, including the death of both her mother and her brother, the trauma of childhood abuse and the effects of an alcoholic and verbally abusive ex-husband. *Id.* at 28.

The individual also offered the testimony of her supervisor, two co-workers, a close friend and her husband. All of these witnesses testified that the individual is a very honest, reliable and trustworthy individual. *Id.* at 36, 52, 69, 92 and 104. Both of the individual’s co-workers testified that the individual’s youth, lack of parental guidance and significant life stressors contributed to her decision to falsify QNSPs, indicating that the individual made a “mistake.” *Id.* at 43, 44 and 58. They stated that this lack of judgment is not characteristic of the individual’s overall trustworthiness. In addition, the individual’s supervisor testified that the individual told her about her falsifications on her QNSPs. He testified that she believed the individual was naïve about the implications of falsifying information on her security paperwork.

Based on the foregoing, I find that the individual deliberately falsified information regarding her drug use on her three QNSPs. However, to determine whether the individual has mitigated the Criterion F concerns, I considered the relevant factors set forth in Adjudicative Guideline E. Some of the conditions that could mitigate security concerns raised under Criterion F include the following: (1) the offense is so minor, or so much time has passed, or the behavior is so

infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (2) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; (3) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and (4) the association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. *See Adjudicative Guidelines* at ¶17 (c), (d), (e) and (g). I find that all of these relevant factors apply in this case.

First, the individual credibly testified that she has had a number of very stressful and emotional events take place in her life, including being sexually abused as a child, losing her mother as a young teenager and being involved in a strained marriage with a verbally abusive and alcoholic husband. Indiv. Exh. A. The individual's witnesses, who have all known her for long periods of time, corroborated her account of the stressful events that have occurred in her life. The individual also credibly testified that she was young and immature at the time she completed her March 2002 QNSP and that she had married her abusive ex-husband in April 2005, before completing her June 2005 QNSPs. She also testified that with respect to her earlier QNSPs, she was misguided by fellow employees and did not understand the seriousness of completing these forms. In light of her testimony, I believe that the individual falsified these QNSPs under such unique circumstances that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgment. Second, the individual has readily acknowledged her falsifications and is working with a therapist to alleviate the stressors in her life that caused her to use poor judgment when completing her QNSPs, particularly her most recent QNSP in November 2010. Third, the individual has demonstrated that she has taken positive steps to reduce or eliminate her vulnerability to exploitation or duress. She credibly testified that she is not embarrassed by her marijuana use in high school and her limited use between January and March of 2009, indicating that she has disclosed her past use to her family, friends, co-workers and supervisor. The individual further testified during the hearing that she has no future intention of ever using an illegal substance. Finally, the individual credibly testified that she no longer associates with persons who use marijuana or other illegal substances. For this reason, I find that the individual has mitigated the security concerns associated with Criterion F.

B. Criterion K

The Criterion K concern raised by the LSO is predicated on the individual's illegal use of marijuana on three or four occasions between 1999 and 2000, while in high school, and two times between January and March of 2009. During the hearing, the individual testified that she used marijuana three or four times while she was in high school. She further testified that she

was at home when she used it as her brother became a heavy user of marijuana when their mother died. Tr. at 121. She reiterated that she only used marijuana on three or four occasions in high school because she was not particularly interested in it, but was more focused on playing sports in high school. *Id.* The individual also discussed her marijuana use in 2009. She explained that she used it twice during this year, once at a small house get-together and the second time at a concert. *Id.* at 122. She testified that this use occurred after her divorce from her ex-husband and with a new set of acquaintances. According to the individual, she no longer associates with these individuals. *Id.*

In evaluating the totality of the circumstances surrounding the individual's illegal drug use, I have determined that the following factors do not weigh in the individual's favor. First, the individual's willful disregard for the law by using illegal drugs is a serious matter. Second, the individual's conduct on the three or four occasions between 1999 and 2000 and the two times in 2009 was both voluntary and knowing.

Against these factors, I weighed the following positive ones. First, the individual's testimonial evidence convinced me that she understands the seriousness of her past drug usage and is taking full responsibility for her actions. The individual's current behavior demonstrates that she is now comporting herself in an honest, trustworthy and responsible manner. Second, the evidence convinced me that the individual's youth, with respect to her use in 1999, and immaturity at the time she used marijuana contributed to her poor judgment in using illegal drugs. Third, the individual convinced me that she has not used illegal drugs since the two occurrences in 2009 and does not associate with the same acquaintances or with any persons who use drugs. Fourth, the individual's family, friends and co-workers are aware of her past illegal drug use, a fact that lessens her susceptibility to blackmail, coercion and undue duress. The individual's co-workers, friend, supervisor and husband provided persuasive testimony to corroborate the individual's testimony on this point. Fifth, the individual has provided compelling testimonial evidence that she will not use drugs in the future. In the end, the individual has provided compelling testimonial and documentary evidence that lead me to conclude that her past use of illegal drugs is unlikely to recur. On balance, the weight of the evidence demonstrates that the individual is a responsible and focused adult who now understands the importance of following rules and laws. Accordingly, after carefully weighing all the evidence, both favorable and unfavorable, I find that the individual has presented compelling evidence to mitigate the Criterion K security concerns at issue.

C. Criterion L

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that she is reliable and trustworthy, and that she is no longer subject to

pressure, coercion, exploitation or duress. For the reasons set forth below, I find that the individual has provided sufficient information to resolve the Criterion L concerns at issue.

The DOE's first concern under Criterion L is that, in her December 2012 IR, the individual indicated that she used marijuana, while holding a DOE access authorization, two times in March 2009 and confirmed this during her January 2013 PSI. The DOE's second concern under Criterion L is that the individual admitted that she signed DOE Security Acknowledgments in March 2002 and June 2005, which indicated that she understood that involvement with any illegal drug could result in the loss of her DOE access authorization. Despite signing these acknowledgements, the individual admitted that she used marijuana twice in 2009.

Among the factors which could serve to mitigate the security concerns raised by the individual's admission that she used marijuana and signed two DOE Security Acknowledgements are: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) the passage of time, the infrequency of the behavior, or that the behavior happened under such unusual circumstances that it is unlikely to recur in the future; and (3) the individual has acknowledged the behavior or has taken positive steps to alleviate the factors that caused untrustworthy, unreliable behavior and such behavior is unlikely to recur. *See Adjudicative Guidelines* at Guideline E at ¶ 17 (a), (c) and (d). In this case, with respect to the individual's admission that she used marijuana in 2009 while holding a DOE access authorization, the individual has now acknowledged her drug usage and no longer associates with individuals who use drugs. The testimony in the record also indicates that the individual's judgment was compromised in March 2009 by the Post Traumatic Stress later diagnosed by her therapist. In addition, the individual has taken positive steps in her life, including her active participation in therapy, to alleviate any factors that caused untrustworthy and unreliable behavior.

Regarding the DOE Security Acknowledgments, when questioned about these security forms during the hearing, the individual stated that she did not specifically recall signing these documents. Tr. at 132. During the hearing, she testified persuasively that she did not understand and recognize the seriousness of completing security forms. The individual testified that she was undergoing a great deal of stress when she completed these forms, but that she has grown and matured greatly since she signed them and now understands the seriousness of completing security forms for the DOE. Given the individual's acknowledgment and remorse for her behavior as well as the stressful events occurring in the individual's life at the time, I am convinced that the individual's behavior is unlikely to recur. *Id.*; *See Personnel Security Hearing*, Case No. TSO-0764 (2009); *see also Personnel Security Hearing*, Case No. TSO-0783 (2009). All of the individual's witnesses testified that she is an honest, trustworthy and reliable person. After considering the "whole person," I am convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified

information. *See Adjudicative Guidelines* at (2)a. I therefore find that the individual has sufficiently mitigated the LSOs concerns under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion F, K and L. After considering all the relevant information, favorable and unfavorable in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criterion F, K and L. I therefore 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. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Officer of Hearings and Appeals

Date: July 25, 2013