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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: October 23, 2012)
) Case No.: PSH-12-0125
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Issued: March 18, 2013

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) to hold a security clearance 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 discussed below, after carefully considering the record before me in light of the relevant regulations, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The administrative review proceeding began when a Local Security Office (LSO) issued a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the LSO stated that the Individual had: (1) an illness or mental condition of a nature which, in the opinion of a licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability, and (2) engaged in a pattern of criminal behavior which brought into question his honesty, reliability, and trustworthiness.¹

The Notification Letter further informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual’s request

¹ *See* 10 C.F.R. § 710.8(h) and (l) (Criterion H and L, respectively).

to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on October 23, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his current girlfriend, a close friend, his supervisor, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0125 (hereinafter cited as “Tr.”). The LSO submitted 21 exhibits, marked as Exhibits 1 through 21, while the Individual submitted five exhibits, marked as Exhibits A through E.

II. FINDINGS OF FACT

The Individual has a history of three arrests, two of which involved alcohol. On August 20, 2011, police arrested the Individual for Driving While Intoxicated (DWI). As a result of this arrest, a court convicted the Individual of DWI and placed him on probation, on January 25, 2012. The terms of his probation required that he abstain from using alcohol and avoid any violation of state law. Exhibit 10 at 2; Exhibit 14. On February 12, 2012, 18 days after he was placed on probation for his DWI, the Individual was arrested and charged with assaulting his then girlfriend (the Victim). Because the Individual had consumed alcohol prior to this incident and because he had committed an assault, police arrested the Individual on April 4, 2012, for violating the terms of his probation. Exhibit 10 at 2.

According to a police report (the Police Report) regarding the alleged assault, the Victim had a “busted and bruised lower lip along with a bleeding cut to the back of the head.” Exhibit 10 at 12. The Police Report further noted that the Individual had a scratch on the neck “consistent with a female acting out in self-defense.” *Id.* The report noted that there were bloodstains on the “living room sofa, bedroom wall and carpet near the foot of the bed, and in the bathroom.” *Id.* A lamp and some decorative wall crosses were broken. *Id.* The Victim reported that the Individual had exhibited a gun during the incident, but had not threatened her with it. *Id.* The Police Report noted that the police found the Victim in a car outside the Individual’s apartment and saw that she had no clothing on below her waist, only a bloody towel, even though the outside temperature was only 17 degrees. *Id.* at 7-8. According to the Police Report, there was “quite a bit of blood” on the towel. *Id.* at 7. The Victim told police that the Individual had “thrown her around” the apartment when she had awakened him by pouring water on him and confronted him with evidence of infidelity. *Id.* The Victim stated that there was a lot of blood in the apartment. *Id.* The Victim told police that the Individual had threatened that she would never see her children if she contacted the police. *Id.* at 8.

During a March 14, 2012, Personnel Security Interview (PSI)² of the Individual, he provided an account of the February 12, 2012, incident that was both internally inconsistent and materially different from the accounts of the incident appearing in the Police Report. Specifically, the Individual claimed that the Victim became upset with him upon realizing that he was communicating with a previous girlfriend and began pushing him. Exhibit 19 at 26. He reacted by pushing her back. *Id.* at 26-28. The Individual further claimed that the Victim kept attacking him and he repeatedly pushed her off of him causing her to hit a wall, which injured her. *Id.* at

² A copy of the transcript of the March 14, 2012, PSI appears in the record as Exhibit 19.

28-32. During this PSI, the Individual stated that he only pushed the Victim three times during the incident. *Id.* at 38. He further claimed he did not notice any blood at the time she hit the wall. *Id.* at 30. After a while, he admitted seeing blood and characterized it as “enough to see.” He noted that he could see the blood on her hand after she touched the back of her head, but denied that he observed “a bunch” of blood or that she was profusely bleeding. *Id.* at 34, 39-41. He also admitted that the Victim had cut her lip during the incident. *Id.* at 44-46. The Individual denied throwing anything during the incident and denied having punched the victim. *Id.* at 41-42. He indicated that the Victim made a phone call, removed much of her clothing, and then left the apartment wearing just a towel. *Id.* at 36-37, 49. He claimed that before she left, she threatened to send three male friends of hers to assault the Individual. *Id.* at 54. The Individual continued to elaborate, claiming that the Victim had, before leaving the apartment, informed him that there was a carload of six to seven of her friends in the parking lot of the apartment complex and that these friends were equipped with firearms. *Id.* at 55-56. The Individual claimed that Victim informed him that these friends were planning to kill him. *Id.* at 56. The Individual stated he then got his gun out to protect himself. *Id.* The Individual attributed the incident to the Victim’s instability, claiming that she was taking anti-depressants for Attention Deficit Hyperactivity Disorder. *Id.* at 57-58. The Individual stated that when the police arrived at his apartment, he invited them in and they arrested him. *Id.* at 64. He said that his gun was under his bed when the police arrived. *Id.* He claimed that he had fully cooperated with the police. *Id.* at 66. The Individual denied threatening the Victim or her children.

At the request of the LSO, the Psychologist evaluated the Individual on April 27, 2012. Exhibit 9 at 2. The Psychologist reviewed selected portions of the Individual’s personnel security file, (including the PSI and the Police Report) and interviewed the Individual. *Id.* at 2, 4. After completing his evaluation of the Individual, the Psychologist issued a report on April 28, 2012, in which he found that the Individual did *not* meet the any criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for any mental conditions or disorders.³ Exhibit 9 at 2, 9-10. However, the Psychologist stated that the Individual: “has the tendency to minimize his responsibility and misrepresent facts when they could reflect badly on him. This is a mental condition that has caused and will likely continue to cause defects in his judgment and reliability.”⁴ *Id.* at 10.

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the 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.

³ A copy of this Report appears in the record as Exhibit 9.

⁴ Interestingly, the Psychologist concluded that even though the Individual had been drinking heavily in the hours preceding the assault incident, by the time that the incident occurred the Individual’s Blood Alcohol Level (BAL) had probably declined to approximately .03. Exhibit 9 at 8. The Psychologist further opined that the Individual “does not qualify for a substance abuse diagnosis.” *Id.* at 10.

§ 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

On April 28, 2012, the Psychologist found that the Individual has “the tendency to minimize his responsibility and misrepresent facts when they could reflect badly on him.” This information raises security concerns about the Individual under Criterion H, since the Psychologist found that his tendency to minimize his responsibility and misrepresent facts when they could reflect badly on him constitutes a condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 9 at 10. An opinion by a duly qualified mental health professional that the Individual has a condition that may impair judgment, reliability, or trustworthiness, could raise a security concern and may be disqualifying. *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) at ¶ 28.

The Individual's three arrests, on August 20, 2011, February 12, 2012, and April 4, 2012, constitute criminal conduct that raises security concerns under Criterion L. “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.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30.

V. ANALYSIS

A. Criterion H

I find that the Individual has mitigated the security concerns raised under Criterion H by the Psychologist's finding that the Individual has a “tendency to minimize his responsibility and misrepresent facts when they could reflect badly on him.” At the hearing, the Individual admitted that he intentionally provided an inaccurate account of the February 12, 2012, assault incident. Tr. at 55-63. The Individual testified that his actions on February 12, 2012, were inappropriate and inexcusable and he accepted full responsibility for them. *Id.* at 61-62, 69-70. He attributed these insights to an anger management class that he has been taking. *Id.* at 64-66. The Individual's current girlfriend also testified on his behalf. She testified that the Individual has been remarkably honest during their relationship, noting that he had fully informed her about the events of February 12, 2012, at the start of their relationship. *Id.* at 41-48.

At the hearing, the Psychologist observed the testimony of each of the other witnesses before he testified. The Psychologist testified that after hearing the testimony of the Individual and his girlfriend, he was convinced that the concerns that led him to find that the Individual had a mental condition affecting his judgment, reliability, and trustworthiness were now resolved. Tr. at 88-89.

Because the testimony of the Individual, his girlfriend and the Psychologist is convincing, I find that the Individual has sufficiently mitigated the security concerns raised under Criterion H.

B. Criterion L

The Individual's three arrests resulted from criminal conduct that raises security concerns under Criterion L. The Individual was originally arrested for DWI on August 20, 2011. On January 25, 2012, he was placed on probation for this DWI. The terms of his probation prohibited him from consuming any alcohol and from committing any offense against the laws of his state. Yet, on the night of February 11, 2012, he willingly consumed a large amount of alcohol. In the early morning hours of February 12, 2012, he committed an offense against the laws of his state by assaulting his then girlfriend. These violations of his parole led law enforcement officials to issue an arrest warrant for the Individual on April 2, 2012. On September 24, 2012, these charges were deferred for nine months pending adjudication, with the understanding that if the Individual complies with his probation they will be dismissed. Exhibit E.

The Individual and his lifelong friend each testified that the Individual's criminal conduct is limited to a discreet period of time in which he was under a great deal of personal stress, having experienced the end of a relationship, the loss of his home, and having his minor children move out-of-town. Tr. at 24-25, 71-72. The insight the Individual has gained through his anger management classes, the return of his minor children and his entrance into a stable relationship with his present girlfriend appear to have resolved these stressors. In addition, the Individual testified that he attributes his conduct to an alcohol problem that he believes he has resolved by abstaining from alcohol use.⁵ Tr. at 61.

Although the Individual has convinced me that he made great strides in recent months, I am not convinced that the Individual has sufficiently resolved the security concerns raised by his criminal conduct. The seriousness of the February 12, 2012, incident, the fact that that incident involved a firearm, and the Individual's intentional provision of inaccurate information during the PSI concerning this incident, each weigh against a conclusion that the Individual possesses the trustworthiness, judgment and, reliably needed to maintain a DOE security clearance. *See* 10 C.F.R. § 710.7(c). Moreover, I am concerned by the Individual's willful violation of parole within three weeks of starting his parole. Simply put, not enough time has elapsed since the events of February 12, 2012, for me to conclude that he should be entrusted with a DOE security clearance.

The concerns about the Individual's judgment, reliability and trustworthiness raised by his

⁵ The Psychologist did not believe that the Individual has any diagnosable alcohol disorder. Tr. at 84-85.

criminal conduct remain unresolved. Accordingly, I find that the security concerns raised under Criterion L by the Individual's three arrests have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and L. While the Individual has resolved the security concerns arising under Criterion H, I find that there are unmitigated security concerns under Criterion L. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: March 18, 2013