



any documents, including a passport, that could be used as proof of citizenship in a foreign country. However, at the 2011 PSI, the individual admitted that he should have answered “yes” to these questions. The LSO concludes that these incorrect responses on his 2010 QNSP and 2010 Attachment II-1 indicate that the individual deliberately falsified significant information on those documents, thereby raising security concerns under the provisions of 10 C.F.R. § 710.8(f) (Criterion F). Enclosure 2, DOE Ex. 1.

In September 2011, the individual requested a hearing (hereinafter “the hearing”) to respond to the concerns raised in the Notification Letter. DOE Ex. 2. In his request for a hearing, the individual, who was in his late teens when he completed the 2010 QNSP, asserted that the incorrect answers on his 2010 QNSP were made due to his “carelessness”, and were “absolutely not [made] by intention or deliberateness.”

At the time when I was filling out the QNSP for the first time (2010), I didn’t realize its importance. I didn’t take it seriously. I felt it [was] long and tedious so I checked “No” to many questions including the ones about my foreign passport and my travel outside the United States. At that time I just wanted to get it done quickly. I regret afterwards that I didn’t fill out the form carefully. But it is true that I made the mistake unintentionally.

*Id.*

On October 24, 2011, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in January 2012, I received testimony from four persons. The individual testified and presented the testimony of his father, a college friend, and the youth leader at his church. Discussion at the hearing centered on the individual’s state of mind at the time he completed the 2010 QNSP, the circumstances under which he provided accurate information to the LSO in 2011, and the individual’s character and reputation for honesty.

## II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. *See Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security test” for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denial”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

### III. FINDINGS OF FACT AND ANALYSIS

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern in this case has been resolved.

#### A. The Individual's Incorrect Responses on the 2010 QNSP Raise Security Concerns

As previously noted, the LSO finds that the individual responded "no" to certain questions on the 2010 QNSP and 2010 Attachment II-1, thereby certifying that he had never held a passport from a foreign government, that he had not traveled outside the United States in the last seven years, and that he did not have any documents, including a passport, that could be used as proof of citizenship in a foreign country. Enclosure 2, DOE Ex. 1. In addition, at the hearing, the individual acknowledged that he also provided inaccurate information on the 2010 QNSP by failing to list his brothers. TR at 60.

I agree with the LSO that the individual's failure to provide accurate information on his 2010 QNSP raises doubts under Criterion F about his candor, honesty, and willingness to comply with rules. The security concern associated with Criterion F is that "[c]onduct 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 . . ." *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines), Guideline E at ¶ 15.* For his part, the individual does not dispute that he provided incorrect information on his 2010 QNSP, but instead offers an explanation that his actions in this regard were not intentional. The burden is with the individual to come forward with testimony and evidence to mitigate the LSO's concerns.

#### B. Mitigating Factors Relevant to these Concerns

As noted above, Part 710 requires a Hearing Officer to issue a decision that reflects a 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 eligibility in favor of the national security. *Id.*

"In resolving a question concerning an individual's eligibility for access authorization," I must consider

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 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.

10 C.F.R. § 710.7(c). In addition, Adjudicative Guideline E sets forth four conditions that can mitigate security concerns raised by the provision of false information in a QNSP:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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;

(d) 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. . . .

Guideline E at ¶ 17.

Considering all of the above factors, I find that the nature, extent, and seriousness of the conduct, the frequency and recency of the conduct, the individual's age and maturity at the time of the conduct, and the likelihood of recurrence are the most relevant factors in this case, with the last being the critical issue in this case. *See Personnel Security Hearing, Case No. TSO-0628 (2008).*<sup>1</sup>

#### C. The Individual's Testimony and Evidence at the Hearing Has Mitigated the LSO's Concerns

The testimony and evidence presented by the individual and his witnesses convince me that the individual's incorrect answers on the 2010 QNSP were caused by his immature tendency to become impatient and careless when completing lengthy forms, and that he was not deliberately attempting to conceal information from the LSO. At the hearing, the individual testified that he

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<sup>1</sup> 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>.

worked as a summer intern at a DOE facility in both 2010 and 2011, and in both years he completed a QNSP in order to obtain a security clearance. He received the 2010 QNSP as an attachment to an e-mail, and completed the form electronically. The individual acknowledged that he signed and submitted the 2010 QNSP without double checking his answers. TR at 61. He admitted that he provided incorrect information on his 2010 QNSP by answering “no” to questions asking if he ever had a foreign passport and if had visited a foreign country in the last seven years, and by not listing his brothers on the form. TR at 6, 60, 70, 77. He testified that he did not intentionally provide false information on the QNSP, but answered those questions incorrectly because he was in a hurry to complete the form.

[The QNSP] was a bit lengthy, and I was rushing through it, so I probably misread some of the questions, and so that's why I filled in the wrong information. I was not deliberately trying to falsify information. It was all because of carelessness.

TR at 7.

The individual testified that when he completed the 2010 QNSP, one of the reasons that he rushed through some of the questions was that he found it too lengthy. He also stated that he found completing the form to be “tedious” because he could not remember some of the required information such as past addresses, and had to ask his parents. He testified that because of these feelings, he wrote “[t]his questionnaire was very annoying” in the QNSP’s comments section. TR at 62. Although this comment displays an immature attitude on the part of the individual at the time that he completed the 2010 QNSP, it supports his explanation that he omitted information from the form due to carelessness in completing it.

The individual explained at the hearing that other information that he provided on the 2010 QNSP also supports his assertion that his failure to report his foreign passport was inadvertent. He stated that on his 2010 QNSP, he indicated that he was born in a foreign country and that he became a naturalized United States citizen in 2010. He testified that this information indicates that he would have needed a foreign passport to enter the United States, and that therefore he was not attempting to conceal his foreign origin when he carelessly answered “no” to the question about having a foreign passport. TR at 75. I agree with the individual’s assertion that the other information that he provided on the form supports the view that his omissions were not deliberate.

Finally, the individual testified that he now believes that the information requested by the LSO on the QNSP and the process for determining his eligibility for access authorization are necessary for safeguarding national security. TR at 80. The individual pointed out that when he completed the 2011 QNSP a year later, he answered the questions about his foreign passport and foreign travel correctly, and he listed his brothers on the form. He stated that he was more careful about completing the 2011 QNSP, and he felt less pressure to complete the form quickly in order to return to his work assignments at the DOE facility. TR at 83.<sup>2</sup> He testified that at the

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<sup>2</sup> With regard to the 2011 QNSP, I asked the individual if he had considered identifying his girlfriend, who is a foreign national, as a “close or continuing” foreign contact responsive to Section 19 of his 2011 QNSP. The individual responded that he did not consider listing her because he thought the question was directed at business or

time he completed the 2011 QNSP, he was not aware of the errors on his 2010 QNSP, and he did not have access to the 2010 QNSP while he was completing the 2011 QNSP. TR at 73-74, 82-83. He stated that he only became aware of discrepancies between the two forms at the time of his 2011 PSI. TR at 74. He stated that in the future, he will be careful to accurately complete his security forms. TR at 77.

The testimony of the individual's witnesses supported the individual's assertions that he is honest, that his incorrect answers on the 2010 QNSP were inadvertent and caused by his impatience to complete that form, and that these careless mistakes are unlikely to recur. The individual's father testified that his son told him that the errors on his 2010 QNSP were caused by his son's completing the form in a "very rushed manner", and that he believes that explanation because his son is an honest person. TR at 12, 22. He stated that his son has a tendency to fill out forms quickly and miss something, and that he needed to check his son's college application forms for mistakes. TR at 17, 20. However, he did not see his son's 2010 and 2011 QNSP forms before they were submitted to the LSO. TR at 18, 21. He stated that when the discrepancies between these forms were discovered by the LSO, he reminded his son that he needed to be more careful to provide accurate information on his security forms. He testified that he believes that his son now understands the importance of the security process and will be more careful in completing security forms. TR at 18. The individual's father confirmed that his son's only foreign travel since first arriving in the United States in the 1990s was a three week family visit to his country of birth in 2007. TR at 14. The individual's church youth leader testified that the individual has been a member of the church for several years, and is a truthful, respectful, intelligent and very trustworthy person. He stated that he is not aware of the individual being careless or hasty in his activities. TR at 44. He stated that the individual has continued to contact him for advice on Christian fellowship activities while at college. TR at 51-52. The church youth leader stated that he is a scientist employed at the DOE facility and that he possesses a DOE access authorization. TR at 43. He stated that he did not believe that the individual deliberately omitted information from his 2010 QNSP, and that he would have provided it if someone had contacted him and asked for it. TR at 46-47. He stated that the individual has great attention for detail in mathematics, but that security forms are different. The church youth leader stated that he himself needed assistance from security officials after completing an electronic QNSP. TR at 44, 42, 49. The individual's college friend testified that he sees the individual on a daily basis, that they live in the same dormitory, and that they attend many of the same classes. TR at 37. He stated that the individual has a reputation for being a very upstanding, very honest person, and he knows that the individual continues to engage in church activities at college. TR at 35. He testified that at college there is a lot of pressure to try and get assignments done right away, as quickly as possible, so he can understand that the individual may have rushed through his 2010 QNSP. TR at 33-34, 36.

My common-sense impression of the individual that I formed over the course of this proceeding is that he is now a straightforward, candid young man who has developed greater maturity and

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government contacts with foreign countries. TR at 92. As many of the individual's classmates at college and in his church community are foreign citizens or naturalized American citizens, it is understandable for him to make such a distinction. Moreover, as he does not live with his girlfriend, Section 19 does not specifically require that she be listed. TR at 92. I therefore conclude that he was not committing a falsification or a careless omission when he answered "no" to this question.

responsibility in the last two years. I found his testimony to be highly credible. He readily admitted that his carelessness in completing the 2010 QNSP was improper, and understood the security concerns that behavior raised. He made a concerted effort to explain the circumstances surrounding the errors on his 2010 QNSP, and his unprompted correction of those errors on his 2011 QNSP. I found no incongruities between his statements at the PSI, his testimony at the hearing, and the testimony of his other witnesses.

As noted above, 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 the future in untrustworthy or irresponsible behavior similar to his hasty and incorrect completion of the 2010 QNSP. I am convinced by the totality of the evidence set forth in this proceeding that he will not repeat this or similar behavior in the future. This conclusion is based on my finding that the individual now appreciates the importance of the security clearance process and the LSO's need for accurate and complete information. I also find that the individual has demonstrated increasing maturity, as exemplified by his submission of a complete and accurate 2011 QNSP prior to being made aware of errors in his 2010 QNSP.

As the foregoing indicates, I am convinced, from the testimony I heard and from my assessment of the individual's credibility and sincerity, that he did not deliberately falsify his 2010 QNSP when he provided incorrect and incomplete information on that document. Moreover, I find that the individual is unlikely to engage in irresponsible or untrustworthy behavior in the future when he is required to provide information or follow procedures relating to national security issues. Accordingly, I find that the individual has mitigated the concerns identified in the LSO's Notification Letter.

#### IV. CONCLUSION

In the above analysis, I have found that there was sufficient derogatory information in the possession of the LSO that raised serious security concerns under Criterion F. 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 have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with Criterion F. I therefore find that granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: February 28, 2012