

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

In the Matter of Personnel Security Hearing )  
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Filing Date: June 27, 2014 )  
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Case No.: PSH-14-0066

Issued: September 12, 2014  
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**Administrative Judge Decision**  
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Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the Department of Energy (DOE) should not, at this time, grant the Individual an access authorization.

**I. BACKGROUND**

The Individual is a contractor employee at a DOE facility. Exhibit (Ex.) 6 at 10. The Individual’s employer requested that the DOE grant the Individual a security clearance. Ex 3 at 1. In its investigation, the local security office (LSO) discovered that the Individual failed to report several criminal offenses, including two Driving While Intoxicated (DWI) arrests and two illegal drug arrests. Ex. 1 at 1-2. Pursuant to its investigation, the LSO referred the Individual for a forensic psychological evaluation from a DOE-contractor psychologist (DOE Psychologist). Ex. 4. The LSO also conducted a personnel security interview with the Individual in January 2014 (January 2014 PSI).

Because neither the psychological examination nor the January 2014 PSI resolved the security concerns revealed in the Individual’s background investigation, the LSO issued the Individual a

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

notification letter (Notification Letter) informing the Individual that substantial doubt existed regarding the Individual's eligibility to hold a security clearance. Ex. 1. In the May 26, 2014, Notification Letter, the LSO outlined the specific derogatory information, described in 10 C.F.R. § 710.8 (f), (j), (h), and (l) (Criteria F, J, H, and L, respectively), which created doubt regarding the Individual's fitness to hold a security clearance.<sup>2</sup> The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge to present evidence to resolve these doubts. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director assigned me as the Administrative Judge in this matter. The DOE introduced seven exhibits (Exs. 1-7) into the record of this proceeding and presented the testimony of the DOE Psychologist at the hearing. The Individual presented his own testimony at the hearing along with the testimony of a federal contracting officer's representative (CO Representative) and a co-worker (Co-Worker).

## **II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS**

### **A. Factual Findings**

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). At the hearing, the Individual did not dispute any of the facts outlined in the Notification Letter. Transcript of Hearing (Tr.) at 54. I set forth my factual findings below.

As part of the process to be granted a security clearance, the Individual completed a Questionnaire for National Security Positions on September 4, 2013 (September 2013 QNSP). Ex. 6. In the September 2013 QNSP, the Individual reported that he had been arrested for Aggravated Driving While Intoxicated in May 2001 but had never been arrested for an illegal drug offense or any criminal felony offense.<sup>3</sup> Ex. 6 at 27-28 (DWI), 28 (no illegal drug or felony offenses).

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<sup>2</sup> Criterion F relates to information indicating that an individual "[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 personnel 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 . . ." 10 C.F.R. § 710.8(f). Criterion H describes information that shows that an individual has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J derogatory information is that which shows that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion L refers to information indicating that an individual 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).

<sup>3</sup> In the Notification Letter, the LSO asserts that this arrest actually occurred in July 2001. Notification Letter at 3; *see* Ex. 3 at 1 (Case evaluation sheet stating that, despite the Individual's response in the September 2013 QNSP, the arrest actually occurred in July 2001). Given the available evidence, I find that the date of this arrest actually

The relevant portion of the Individual's criminal record is described below:

<u>Date:</u>	<u>Criminal Charge:</u>
December 1987	Possession of Marijuana under two ounces
January 1997	Possession of a Controlled Substance, Cocaine Under One Gram; Unlawful Carrying of a Weapon/Club (felony)
June 2001	Driving While Intoxicated (Breath Alcohol Content (BAC) 0.127 and 0.121)
July 2001	Aggravated Driving While Intoxicated/Speeding
January 2005	Driving While Intoxicated (BAC 0.08)
August 2013	Battery
October 2013	Aggravated Battery with a Deadly Weapon (felony); Abuse of a Child (felony); Negligent Use of a Weapon

Ex. 7 at 24, 30-31, 42-43, 76, 81 (January 2014 PSI).

The Individual was interviewed by an OPM investigator (OPM Investigator) as part of the security clearance process. When asked about the June 2001 DWI arrest, the Individual told the OPM Investigator that he had not been arrested on that date and that someone else using his old social security number must have been arrested. Ex. 7 at 53-55.

In March 2014, the Individual was examined by the DOE Psychologist. In his April 2014 evaluative report (Report), the DOE Psychologist found that the Individual suffered from Alcohol Related Disorder, Not Otherwise Specified (NOS), a condition that could cause a significant defect in judgment and reliability. Ex. 4 at 8. In the Report, the DOE Psychologist found that the Individual's two DWI arrests in 2001, occurring within 38 days of each other, and the associated post-arrest requirements of attending Mothers Against Drunk Driving meetings and counseling, were sufficient to conclude that he was suffering from Alcohol Abuse during 2001. Ex. 4 at 7. The DOE Psychologist noted that after the Individual's arrest in 2005 for DWI,

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occurred in July 2001. In this Decision, I will refer to the DWI arrest reported by the Individual in the September 2013 QNSP as the July 2001 DWI.

the Individual decided to stop consuming alcohol for a period of three years. Ex. 4 at 7. The DOE Psychologist also noted that by 2012, the Individual was consuming three to four beers a week and had two criminal conduct charges (the August 2013 and October 2013 criminal charges), one of which was alcohol-related (the October 2013 criminal charge). Ex. 4 at 7. As another factor in diagnosing the Individual as suffering from Alcohol Related Disorder, NOS, the DOE Psychologist noted the Individual's history of not being truthful. Ex. 4 at 7, 8-10. The DOE Psychologist recommended that the Individual undergo 12 months of sobriety and that the Individual participate in an Alcoholics Anonymous or alcohol education program in order to demonstrate adequate evidence of rehabilitation or reformation. Ex. 4 at 9.

In the January 2014 PSI, the Individual confirmed his arrest record as recorded above. The Individual also admitted that he had not revealed the June 2001 and January 2005 DWI arrests and the 1987 and 1997 illegal drug arrests in the September 2013 QNSP because he did not think a background check would reveal these arrests since his social security number had been changed in 2005 or 2006.<sup>4</sup> Ex. 7 at 51, 53-55, 90-91. He also admitted deliberately misleading the OPM Investigator concerning the June 2001 DWI arrest because he did not believe the arrest would be revealed in any check of his records using his current social security number and that he was embarrassed about having been arrested for DWI. Ex. 7 at 126.

## **B. Security Concerns**

### ***1. Criteria F and L Derogatory Information***

In its Notification Letter, the LSO invoked Criteria F and L derogatory information to support its decision not to grant the Individual a security clearance. With regard to Criterion F, the LSO referenced the Individual's alleged falsification on the September 2013 QNSP relating to failing to list the June 2001 and January 2005 DWI arrests, the 1987 and 1997 illegal drug arrests, and the felony arrest in January 1997.<sup>5</sup> Conditions that can raise a security concern include the deliberate omission, concealment, or falsification of relevant facts from any questionnaire completed during the personnel security process. *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 identified as Criterion L derogatory information the Individual's pattern of criminal conduct as demonstrated by his seven arrests for a variety of offenses including DWI, illegal drug possession, and felony arrests. 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. *See Adjudicative Guidelines*, Guideline J. Given the Individual's admissions in the January 2014 PSI regarding his criminal record, his failure to report fully his prior criminal record in the September

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<sup>4</sup> The Individual apparently reported the July 2001 DWI because a police officer informed him that his arrest record only showed the July 2001 DWI arrest. Ex. 7 at 51.

<sup>5</sup> The Individual's other felony arrest, in October 2013, occurred after he had completed the September 2013 QNSP.

2013 QNSP, and the misleading answer given to the OPM Investigator regarding his June 2001 DWI arrest, the LSO had ample grounds to invoke Criteria F and L.

## ***2. Criteria H and J Derogatory Information***

The Notification Letter also cited derogatory information under Criteria H and J as grounds to support its decision not to grant the Individual a security clearance. The LSO referenced the DOE Psychologist's Report diagnosing the Individual as suffering from Alcohol Related Disorder, NOS, an illness that could cause a significant defect in judgment, as support for its invocation of Criterion H. The LSO also cited the Report and the Individual's statements regarding his alcohol-related arrests as support for its invoking Criterion J. I find that the information set forth above constitutes derogatory information that raises security concerns about the Individual under both Criteria H and J. A mental condition, such as Alcohol Related Disorder, NOS, can impair a person's judgment, reliability, and trustworthiness. *See Adjudicative Guidelines*, Guideline I. Further, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *Adjudicative Guidelines*, Guideline G.

## **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that, in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the Individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the Individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

A DOE administrative proceeding under 10 C.F.R. Part 710 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). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the Individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the Individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

## IV. ANALYSIS

### A. Criteria F and L

At the hearing, the Individual testified that he had been the victim of identity theft and that, as a result, he had been issued a new social security number. Tr. at 28-29. Consequently, he did not report the June 2001 and January 2005 DWI arrests, his 1987 and 1997 illegal drug arrests, or his 1997 felony arrest in the September 2013 QNSP because they were committed when he held his prior social security number. Consequently, he believed that they would not be reported on any criminal arrest report that used his current social security number. Tr. at 28-29, 32. With the issuance of a new social security number, the Individual believed that he had a “clean start.” Tr. at 32. He now realizes that he should have reported all of these arrests in the September 2013 QNSP and that “it’s better just to come upfront with everything that we need to take care of and all the questions that have been asked of me.” Tr. at 34-35.

The Individual explained that his 1997 felony arrest for unlawful carrying of a weapon had resulted when he was stopped by police after working on a remodeling job and they found a rod used to hang clothes in the back seat of his truck.<sup>6</sup> Tr. at 34. With regard to his two most recent criminal charges in August and October 2013, both originated with altercations he had with his former son-in-law. Tr. at 50. In August 2013, the Individual’s former son-in-law came to his house and the Individual asked the ex-son-in-law not to return. The former son-in-law began to yell at the Individual’s wife and his daughter and then began to point his finger into the Individual’s face. Tr. at 51. Individual then pushed the former son-in-law’s hand away. Local police arrived and broke up the argument.<sup>7</sup> Tr. at 51. The Individual then received a citation in the mail a month later charging him with battery. Tr. at 51. As for his felony arrest in October 2013, the Individual testified that, after consuming one beer, he was getting ready for bed around 11:00 p.m. when his former son-in-law came to his house and became “abusive” towards his wife and daughter during an argument.<sup>8</sup> Tr. at 37. The Individual then obtained his pistol, removed the bullets and then took the pistol with him downstairs to confront his former son-in-law. Tr. at 52-53.

The CO Representative and the Co-Worker testified as to the Individual’s excellent performance at his employment. Tr. at 12, 15-18, 21-24. The CO Representative testified that she believes that the Individual is trustworthy and has employed the Individual to perform work at her house for several weeks and that she observed no problems or concerns with the Individual. Tr. at 14. The Co-Worker believes that the Individual is dependable and trustworthy. Tr. at 26.

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<sup>6</sup> This arrest occurred on the same day he was arrested for possession of cocaine.

<sup>7</sup> The citation for battery related to the August 2013 incident was later dropped by the state’s attorney. *See* Ex. 7 at 113.

<sup>8</sup> At this time, the Individual’s grandchildren were asleep at the Individual’s house. Tr. at 52.

After reviewing the evidence before me, I cannot find that the Individual has resolved the security concerns raised by the Criteria F or L derogatory information. The Criterion F information centers on the Individual's misleading answers in the September 2013 QNSP. The Individual has admitted that his answers regarding the full extent of his DWI arrests and 1997 felony arrest were false. Further, the Individual's explanation for not revealing these arrests – the issuance of a new social security number – is simply not credible. This is especially true given the fact that in the January 2014 PSI the Individual reported that a local police officer told him that the July 2001 DWI appeared on his arrest record. Ex. 7 at 51. Given the Individual's alleged belief, the July 2001 arrest itself should not have appeared on his record. I believe that a significant reason why the Individual failed to be forthcoming was his own embarrassment. *See* Ex. 7 at 54 (Individual stating during the January 2014 PSI that one of the reasons he was not truthful with the OPM investigator regarding the extent of his DWI arrests was embarrassment). The Individual's falsifications are relatively recent and I find no applicable mitigating factors that would resolve the Criterion F security concerns raised by his falsifications.

The Criterion L security concerns center on the Individual's criminal history. Most of the cited arrests occurred a significant number of years ago. There is no evidence before me that indicates that the Individual has had any involvement with illegal drugs for a number of years. Further, the significance of the August 2013 arrest is diminished by the fact that the local State's Attorney dropped the charges. However, I find that the Individual's October 2013 arrest that involved his use of an unloaded pistol represents a significant lack of judgment. Brandishing a weapon, even an unloaded pistol, could have resulted in a dramatic escalation in an already tense and hostile situation. The testimony provided by the CO Representative and the Co-Worker reflects well on the Individual's conduct. However, given the relatively recent nature of the October 2013 arrest and its seriousness, I cannot find that the Individual has fully resolved the Criterion L concerns raised by the incident resulting in his October 2013 arrest and his history of criminal conduct.

## **B. Criteria H and J**

At the hearing, the Individual testified that he does not believe that he has an alcohol problem. Tr. at 35-36. He currently consumes anywhere from two to four beers while working in his yard but does not consume alcohol every day. He primarily consumed alcohol on weekends. Tr. at 35-36. The last time the Individual became intoxicated, after consuming six or seven beers, was approximately a year ago. Tr. at 50. He does not believe that alcohol played any role in the incident leading to the October 2013 arrest. Tr. at 37. As for his two DWI arrests in June and July 2001, the Individual believes that the arrests were related to his stress regarding the illness and death of his mother. Tr. at 38-39. Neither the CO Representative nor the Co-Worker had observed the Individual consuming alcohol or impaired by alcohol or illegal drugs while on the job. Tr. at 12.

The DOE Psychologist testified that despite the additional information adduced at the hearing, his opinion regarding the Individual's diagnosis and condition had not changed. Tr. at 56-57. The DOE Psychologist believes that the Individual's failure to be truthful has some features of antisocial and narcissistic tendencies. Tr. at 57. Additionally, the DOE Psychologist noted that the Individual's alcohol consumption has been increasing and that since the increase in his alcohol consumption, the Individual has exercised questionable judgment in his behavior under duress. Tr. at 57-58. The DOE

Psychologist opined that the probability that the Individual will exhibit poor judgment or questionable behavior in the future, absent treatment, is moderate to high. Tr. at 58.

The Criteria H and J concerns center on the DOE Psychologist's diagnosis of the Individual as suffering from Alcohol Related Disorder, NOS, and the Individual's history of alcohol-related arrests and incidents. Most of the alcohol-related incidents, specifically the DWI arrests, occurred nine or more years ago. As for the two most recent arrests, the August and October 2013 arrests, there is little evidence, beyond that of the Individual's testimony that he had one beer before the October 2013 arrest, that alcohol was a factor. Nonetheless, in making his diagnosis, the DOE Psychologist also noted the Individual's demonstrated pattern of falsification of information and his increase in alcohol consumption after ending his three-year period of abstinence in 2008. Given the deference that OHA Administrative Judges usually accord mental health experts, I cannot find that there is sufficient evidence before me whereby I can reject the DOE Psychologist's clinical opinion regarding the Individual. *See Personnel Security Hearing*, Case No. PSH-13-0127 (2014) (deference to the opinions of mental health experts). Because the Individual does not believe that he has an alcohol problem, he has not sought treatment of the type described in the Report. Consequently, I find that the Individual has not presented sufficient evidence to resolve the security concerns raised by the Criteria H and J derogatory information.

## V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not mitigated the DOE's security concerns under Criteria H, J, F and L. Therefore, the Individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not, at this time, grant the Individual an access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals

Date: September 12, 2014