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United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing )

Filing Date: December 4, 2014 )

Case No.: PSH-14-0104

Issued: March 13, 2015

**Decision and Order**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) for 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 individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. In July 2014, the local security office (LSO) received an incident report from the individual’s employer. That report indicated that she had received a verbal reprimand and had been removed from her position for accessing and

<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 also be referred to in this Decision as a security clearance.

<sup>2</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>.

viewing other employees' personnel records without a business need, in violation of the employer's policies. DOE Exhibit (DOE Ex.) 5. Because this information raised security concerns, the LSO summoned the individual for an interview with a personnel security specialist. After this Personnel Security Interview (PSI) failed to adequately address these concerns, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced seven exhibits into the record of this proceeding. The individual introduced three exhibits and presented the testimony of three witnesses, in addition to testifying herself.

## II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (1) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (1) defines as derogatory information indicating that an 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 national security. As support for its invocation of this criterion, the Letter alleges during her September 2014 PSI, the individual admitted that:

- From May 2013 to August 2014, she misused her Human Resources (HR) Queries access by viewing 10 to 15 of her co-workers' wage and employment classification information without a business need;<sup>3</sup>
- In 2013, she misused her HR Queries access by viewing a student intern's degree program and employment classification and sharing the information with a colleague;
- She misused her HR Queries access by viewing between 10 and 20 pictures of other employees without a business need; and
- Prior to obtaining HR Queries access, she received training and signed a form which indicated that it was a violation of company policy to access the information for anything

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<sup>3</sup> The August 2014 ending date alleged in the Notification Letter for the individual's misuse of her HR Queries access is incorrect. The record indicates that she was reprimanded and removed from her position effective June 2, 2014, and the individual testified that her access ended in "approximately March 2014." *See* DOE Ex. 5; Hearing Transcript (Tr.) at 14.

other than a business need. Despite this, she knowingly violated the policy on numerous occasions.

The individual generally does not dispute these allegations, and they adequately justify the DOE's invocation of criterion (I). They also raise serious security concerns. Deliberate or negligent failure to comply with rules and regulations pertaining to information technology systems or to the protection of classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E, K and M.*

### **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). *See also Adjudicative Guidelines, ¶ 2(c).* I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring 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); *Adjudicative Guidelines, ¶ 2(a).*

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). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein.* I am also required 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); *Adjudicative Guidelines, ¶ 2(b).*

### **IV. ANALYSIS**

#### **A. Mitigating Evidence**

At the hearing, the individual attempted to demonstrate, through her testimony and that of two co-workers and her manager, that she is a trustworthy and reliable person who can be depended upon to follow all rules regarding the safeguarding of classified or sensitive information.

The individual testified that she has previously worked in jobs in which she was entrusted with items of value or sensitive information without any breaches of her responsibilities. Tr. at 11-12. At the time that she had access to her current employer's HR database (from May 2013 to approximately March 2014), she was a program administrator who was charged with interviewing, hiring and monitoring the progress of apprentices. Tr. at 14. She said that she viewed the wage and professional level information of 10 to 15 of her co-workers because she was just finishing work on her Masters Degree and she wanted to see what kind of job she could get with her current employer once she finished. Tr. at 21. She admitted that this was not within the scope of her professional responsibilities, but that she did it anyway because at the time, she was "very insecure" about her professional status, and therefore she "acted impulsively." Tr. at 22. She added that she did not share this information with anyone and did not use it for personal gain or personal advantage. Tr. at 23-24.

The individual also testified that she inadvertently violated her employer's policies by viewing a student intern's degree program and employment classification information and sharing it with a colleague. She explained that the colleague inquired about the intern's information because he wanted to ensure that the intern "had been placed appropriately in her current job position, which he had not been made aware of previously." Tr. at 15. Because of the colleague's position, the individual assumed that he had the same or similar access to the information that she did, and she believed that providing the information was within the scope of her duties because she had received very similar requests from other customers in the past. Tr. at 15-16. The individual acknowledged that accessing the requested information was not within the scope of her duties as a program administrator, and that she had learned from the experience that she needed to be more diligent about adhering to her duties and about the people to whom she disclosed sensitive information. Tr. at 17.

Regarding her unauthorized viewing of pictures of her fellow employees, the individual said that a co-worker had approached her and informed her that his daughter had recently graduated from high school and would be interested in a job as a summer intern. He gave her some information about his daughter and asked that if the individual knew of any openings for her, to let the fellow employee know. By the time the individual became aware of a suitable position, she had forgotten the name of the fellow employee, and she looked at the pictures to identify the person that had talked to her about his daughter. Tr. at 18. Although as a recruiter she believed it to be within the scope of her duties to contact the employee, she acknowledged that the way that she attempted to identify him, by using her HR Queries access to view photos of her co-workers, was inappropriate. Tr. at 20. She testified, though, that she was not aware at the time that she viewed the photos that she was violating her employer's policies, and that she did not receive any training to that effect previous to the incident. Tr. at 19.

The individual committed these violations of her employer's policies despite learning during her training that she was not permitted to access the information for anything other than a business need, and despite signing a form to that effect. Tr. at 24-25. She explained that she acted carelessly, and was not mindful of those policies when she accessed the information. The individual has no objection to these policies, and is willing to comply with them and with DOE policies in safeguarding information in the future. She referred to her actions as "stupid, careless

mistakes” that happened during an isolated period, and that do not accurately reflect her character. Tr. at 25-26.

These mistakes are unlikely to recur, she added, because she has completed her Masters’ Degree and is no longer insecure about her professional status, and because she is receiving counseling so that she can more readily recognize her insecurities and tendencies to act impulsively and more readily control them. Tr. at 27. In her counseling, she has “been able to identify different areas, actions, meditation, cognitive thinking, physical exercise, and just different ways to be able to hone in on [her] stressors, to be able to think more proactively versus reactively, to be able to . . . analyze the situation and the environment and my own personal feelings before reacting to possibly a negative environment.” Tr. at 32.

One of the individual’s co-workers was an investigator who conducted an inquiry into the individual’s actions. This co-worker testified that the individual was very honest and forthcoming during the investigation, and expressed remorse for her actions. Tr. at 61-68. When asked about the individual’s character, her manager said that “she’s been fitting in very well with our organization,” and that she has been “very forthcoming with information . . . about this process.” Tr. at 77. Another co-worker said that he “never had a problem with [the individual’s] integrity,” and that he “never questioned her reliability or judgment.” Tr. at 85.

The individual also submitted letters from her counselor, her psychologist, and a third co-worker. The individual’s counselor wrote that she has “successfully established and completed a lifestyle plan” during their coaching sessions, and that the individual “was proactive in identifying areas of lifestyle improvement in her health to strengthen and taking the time and initiative to improve her overall health and wellbeing.” Individual’s Exhibit (Ind. Ex.) C. Her psychologist wrote that the individual has “been addressing her stress management skills and self-understanding and has been making excellent progress in these areas.” Ind. Ex. A. According to the co-worker, who worked closely with the individual in 2010-2011, the individual was “always very careful to appropriately mark, store and protect” confidential, proprietary, or “Official Use Only” information or documents, and to follow company rules and procedures. Ind. Ex. B.

## **B. Administrative Judge’s Determination**

Despite this mitigating evidence, I continue to harbor doubt about the individual’s judgment and reliability. These doubts are based on the frequency and recency of her violations of her employer’s policies, and on the nature of the transgressions themselves.

The individual has admitted to knowingly and deliberately violating her employer’s policies on 10 to 15 occasions over a 10-month period by accessing sensitive, personal information of her co-workers without a business need. She also inadvertently violated those policies on multiple additional occasions during that period by accessing the personal information of a co-worker and then communicating that information to another co-worker who was not authorized to receive it, and by viewing the photographs of 10 to 20 other co-workers. This was therefore not a single, isolated incident, but a pattern of misbehavior occurring over a period of almost a year. Moreover, the investigator testified that the incidents of improper access occurred throughout the 10 months that the individual had HR Queries access, Tr. at 69, and that access ended in March

of 2014, less than one year before the hearing. The passage of time is not a mitigating factor in this case. *See Adjudicative Guidelines*, ¶¶ 17(c), 35(a) and 41(a).

The protection of classified and sensitive information lies at the very core of the DOE's personnel security program. Although the information that she improperly accessed was not classified, the individual has demonstrated a willingness to disregard policies and procedures designed to protect information from unauthorized disclosure. Her actions with regard to her co-workers' records have resulted in a serious violation of their privacy. Similar actions with regard to classified information could have catastrophic results.

The mitigating evidence presented by the individual does not adequately address these concerns. Although the individual has been receiving counseling, the record indicates that this began before the individual's improper HR Queries access was discovered, with the purpose of addressing an alleged negative work environment, and not specifically to address the individual's rules violations. Tr. at 37-38; Ind. Ex. A. I also attribute little weight to the statement of the individual's co-worker set forth in Ind. Ex. B about the individual's handling of sensitive information in 2010-2011, given the more recent misconduct described above.

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criterion (1). Consequently, she has failed to convince me that restoring her 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 restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: March 13, 2015