

Adjudicative Guidelines (Guideline E). Ex. 1. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The individual requested a hearing and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on May 16, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the individual and five witnesses. *See* Transcript of Hearing, Case No. PSH-18-0041 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as "Ex.>").

II. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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). 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 denials"); *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).

The individual must come forward at the hearing with evidence 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 individual is afforded a full opportunity to present evidence supporting his 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 evidence 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.

III. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline E of the Adjudicative Guidelines. Guideline E relates to conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations, which raises questions about an individual's reliability, trustworthiness and ability to protect classified information. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. *See* Adjudicative Guidelines at ¶ 15. With respect to Guideline E, the LSO cited the individual's denials of illegal drug use in his 2013 and 2017 QNSPs and his subsequent admission of illegal drug use in the PSI. Also cited were the individual's statements during the PSI that he was not forthcoming about his drug use in the 2013 and 2017 QNSPs because he feared it would hurt his career and that he intentionally failed to

disclose his drug use on his 2017 QNSP because of his prior failure to disclose his drug use on his 2013 QNSP.

IV. Findings of Fact and Hearing Testimony

At the hearing, I took testimony from the individual, his girlfriend, his friend, his former supervisor, a current colleague, and his current supervisor.

During his January 2018 PSI, the individual admitted to his drug use and stated that he had originally lied about his drug use in the 2013 QNSP because he was afraid that it would affect his career, that he would not be able to progress in his job, or that he may not get the job. Ex. 8 at 58, 60. The individual admitted that he knew providing false information on his QNSP was illegal. Ex. 8 at 57. He further stated that military acquaintances in 2013 informed him that his drug use could prevent him from getting a clearance and that it could adversely affect the jobs available to him. However, he acknowledged that they did not directly tell him to falsify his QNSP. Ex. 8 at 60. The individual stated that many other people told him that if he used drugs, he should omit this fact from his QNSP because his job prospects would be lessened. Tr. at 58.

The individual testified that his lack of candor was a bad decision. Tr. at 60. He stated that he lied again on his 2017 QNSP for the same reasons that he did on his 2013 QNSP, and because he felt trapped by the first lie. Ex. 8 at 61; Tr. at 57. The individual testified that, with regard to the 2017 QNSP, he felt like he was already “too deep into it” to tell the truth. Ex. 8 at 61; Tr. at 57.

The individual testified that he regrets having lied on his QNSPs and that he does not intend to lie in the future. Tr. at 49–50. He considers himself to be an honest person, preferring to tell the truth immediately, and he stated that he has learned from this experience. Tr. at 50, 56. The individual stated that he was relieved that everything was out in the open now, and that he has nothing more to hide. Tr. at 50. He testified that he feels uncomfortable lying to people and that he is not a good liar. Tr. at 50.

The individual further testified that it was his best friend who provided OPM with information about the individual’s prior drug use. Tr. at 53. The individual continued that they are still friends and that he has nothing against the friend, because the friend simply “told the truth, he did what was right.” Tr. at 53. The individual accepts responsibility for his mistake. Tr. at 49.

The individual’s former supervisor testified that the individual is honest and trustworthy, stating that he followed company rules and never lied at work. Tr. at 12. The individual’s current supervisor echoed that testimony, adding that the individual had “shown nothing but good integrity” since starting his job. Tr. at 28. The individual’s colleague testified that, both at work and outside work, the individual is honest. Tr. at 21–23. The colleague continued that the individual is both reliable and honest, and operated the evening shift by himself. Tr. at 22–23. The colleague concluded that the individual proactively discloses problems and takes responsibility for his few mistakes. Tr. at 22–23.

The individual’s friend, who has known him since middle school, testified that the only person he trusts more than the individual is his own his wife. Tr. at 34, 36. He described how the individual has, since a young age, held his friends accountable and encouraged them to do the right thing. Tr.

at 36–37. He indicated that the individual has always been honest and forthcoming, and that his lack of candor on the QNSPs was out of character. Tr. at 37–39.

The individual’s girlfriend testified that the individual is one of the most upstanding men she has ever met. Tr. at 46. She continued that he has never lied to her or misled her. Tr. at 46. She, too, was surprised by the individual’s lack of candor on the QNSP. Tr. at 46. She described the individual as “absolutely” reliable and testified that she would trust him with her life. Tr. at 46–47.

V. Analysis

I have thoroughly considered the record of 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s security clearance should not be granted. I cannot find that granting 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.

As an initial matter, I note that legitimate security concerns exist under Guideline E as a result of the individual’s falsifications on his two QNSPs and during the security clearance process.

Guideline E provides that the following conditions (in relevant part) may mitigate Personal Conduct security concerns: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) 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; (3) 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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and (4) association with persons involved in criminal activities was unwitting, 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. Adjudicative Guidelines at ¶ 17(a), (c), (d), (g).

After reviewing the evidence before me, I find that none of the Guideline E mitigating factors are applicable in this case. The individual did not make prompt efforts to correct his falsification and, because lack of candor during security investigations is of special interest, I cannot consider the offense minor. He maintained his lie for several years and his falsifications are relatively recent as evidenced by his falsification on his 2017 QNSP. There is not an underlying cause of his lie that can be remedied by therapy or abandoning old associations. He was afraid of the consequences that the truth might bring and chose to maintain his lie up until the very moment it was exposed. While I believe that the individual is generally an honest man in many situations, he has demonstrated a willingness to mislead security officials to avoid negative consequences. Given these findings, I cannot conclude that the Guideline E security concerns have been resolved.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guideline E of the Adjudicative Guidelines. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant an access authorization to the individual. The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals