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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: April 29, 2021) Case No.: PSH-21-0051
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Issued: July 29, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization 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 of Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be granted.

I. Background

The Individual is an applicant for a position that requires him to hold a security clearance. The Individual completed and signed the Electronic Questionnaires for Investigations Processing (e-QIP) in December 2019. Ex. 4. In response to the e-QIP’s questions regarding his criminal history, the Individual indicated that he had been imprisoned for a term exceeding one year, resulting from a 2009 conviction of Assault on a Federal Officer. *Id.* at 52-53. The Individual also indicated that he was convicted of Driving while Intoxicated (DWI) on several occasions.² *Id.* at 54-55. Due to unresolved security concerns, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under the Bond Amendment and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access to authorization or security clearance.

² The convictions listed in the e-QIP to do not exactly correspond with the incidents of criminal conduct listed on the Summary of Security Concerns. Ex. 1; Ex. 4 at 52-55.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted five numbered exhibits (Exhibits 1-5) into the record. The Individual submitted six exhibits (Exhibits A-F) and presented the testimony of ten witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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) (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 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. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline J of the Adjudicative Guidelines and the Bond Amendment, codified at 50 U.S.C. § 3343(c)(1)(A).

Guideline J relates to security risks arising from criminal conduct. Criminal conduct “calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Guideline J at ¶ 30. In support of the use of Guideline J, the LSO cited five separate instances of criminal conduct between the years 2003 and 2010. Specifically, the LSO cited:

- (1) A May 2010 arrest and charge of Resisting an Officer and Possession of a Weapon, which resulted in 84 months of incarceration in Federal prison, followed by supervised probation from April 2016 to September 2018;

- (2) Charges filed against the Individual in Federal court, in December 2009, for three counts of Assaulting, Resisting, or Impeding Certain Officers or Employees, three counts of Aiding and Abetting; and three counts of Using and Carrying a Firearm During and in Relation to a Crime of Violence;
- (3) A February 2006 arrest and charge of Aggravated Driving Under the Influence (DUI);
- (4) An August 2005 arrest and charge of Unlawful Use of a License and No Proof of Financial Responsibility;
- (5) A June 2003 arrest and charge of a misdemeanor traffic offense and DUI. Ex. 1

The Bond Amendment states, in pertinent part, that an agency may refuse to grant or renew a security clearance for an individual who “has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than one year.” 50 U.S.C. § 3343(c)(1)(A). The LSO cited that, as the result of a May 2010 arrest and charge of Resisting an Officer and Possession of a Weapon, the Individual was sentenced to 84 months of incarceration at a Federal Prison. Ex. 1. The Individual was incarcerated from April 2011 to December 2015. In light of these facts, the LSO’s invocation of security concerns under Guideline J and the Bond Amendment is justified.

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below. At the hearing, the Individual presented his own testimony and that of 9 other witnesses. The Individual testified that the incident which resulted in him being sentenced to prison occurred in January 2005, but he was not indicted until 2009.³ Tr. at 116; Ex. E. He noted that, around the time of the incident, he was under significant stress as the result of a divorce and began consuming alcohol as a coping mechanism. Tr. at 116. The Individual explained that, on the day of the incident, he was intoxicated and socializing with a friend who began fighting with law enforcement, which ultimately led to his arrest, albeit years later. *Id.* at 118, 121. The Individual testified that he pled guilty to the charges as he realized that he “had done wrong.” *Id.* at 121. He stated that at the time of the incident he “was angry” and “hanging around with bad people,” but he feels that he has taken responsibility for his actions and does not want his life to turn in that direction again. *Id.* at 121-122.

As a result of the Individual’s guilty plea, he served 84 months in a Federal prison. *Id.* at 124. He stated that while he was in prison, he did not “want to be in there just wasting time,” so he participated in painting, computer, and furniture building classes. *Id.* at 113. He also worked at the prison building furniture. *Id.* As a result of the painting classes, he became a very skilled artist and

³ The date of the incident leading to the Individual’s incarceration is not listed in the Summary of Security Concerns (SSC). Ex. 1. The dates on the SSC appear to correspond to the date the Individual was arrested, which was not until May 2010, and the date of the indictment, which is incorrect according to official court documents. *See* Ex. 1 at I, II (A-B); Ex. E.

continues to paint to this day.⁴ *Id.* at 114. He explained that painting is a very therapeutic practice for him and helps him to relax. *Id.* at 115.

Upon being released from prison, the Individual underwent supervised probation for “a little over two years;” however, he was able to complete his probation early. *Id.* at 107, 124. He testified that during his supervised probation, he engaged in a year of counseling, participated in an anger management course, and completed an alcohol and drug rehabilitation course. *Id.* at 108. He explained that these classes made him “see different [sic],” taught him about respect, and taught him the negative consequences that can result from the use of drugs and alcohol. *Id.* at 108-109.

The Individual testified that since his release from prison, he has always maintained employment, no longer becomes intoxicated or socializes with “bad people,” and has not engaged in any criminal conduct.⁵ *Id.* at 107, 110, 122. He explained that he participates in “a lot of trainings” at the site where he is employed and has never violated any security protocols. *Id.* at 111, 125. He also described how he helps his community by participating in the restoration of a church and donating materials. *Id.* at 111-1112.

Two of the Individual’s longtime friends testified on his behalf and stated that they have seen “positive” and “tremendous” changes in the Individual since he was released from prison.⁶ *Id.* at 19, 94. Both witnesses noted that the Individual has removed negatively influential friends from his life. *Id.* at 20, 94-95. The Individual’s significant other added that he “came back [from prison] extremely positive [and v]ery determined on what he wanted to do with [their] lives.”⁷ *Id.* at 45. She explained that the Individual built them a house and has been caring for her “110 percent” through her cancer treatment. *Id.* at 46. She noted that the Individual helps her with church activities in their community and has aided the community in donating materials for construction projects. *Id.* at 49.

Regarding the Individual’s employment, his supervisor (Supervisor) and a deputy program director (Director) at his employment site testified on his behalf. *Id.* at 52, 72. The Director testified that the Individual has a “fantastic” work ethic and follows rules and regulations “without a doubt.” *Id.* at 53. Specifically, the Director stated that the Individual “followed every rule we gave him” and never “waived from the safety requirements.” *Id.* at 54-55. The Supervisor confirmed the Individual’s dedication to workplace procedures and explained that the Individual also completes “lots of different trainings” at the worksite. *Id.* at 77. Both the Director and the Supervisor testified that the Individual holds his peers accountable to the rules and regulations. *Id.* at 55. Specifically, the Supervisor stated that the Individual “set some of the guys straight.” *Id.* at 74. Both witnesses described the Individual as reliable and honest. *Id.* at 56, 72, 74.

⁴ The Individual submitted examples of his painting into the record, which clearly evidence the skills he obtained from his classes while imprisoned. Ex. F.

⁵ All of this testimony was supported by that of his witnesses, including that of his supervisor and deputy program director. *See* Tr. at 19-20, 30, 47, 49, 94.

⁶ One of the witnesses has known the Individual for approximately 20 years, and the other witness testified that he has known the Individual for approximately 30 years. Tr. at 18, 81.

⁷ The Individual and his significant other met after the 2005 incident. Tr. at 42.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony 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. As an initial matter, I note that legitimate security concerns exist as a result of the Individual's criminal history. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns noted by the LSO regarding Guideline J and the Bond Amendment. I find that granting the Individual's DOE security clearance will not endanger the common defense and security, and it is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should be granted. The specific findings that I make in support of this decision are discussed below.

Given that the Guideline J and Bond Amendment concerns arise from the same conduct, I will analyze them together. As stated above, the Bond Amendment disqualifies an individual from holding a security clearance if that individual "has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than one year." 50 U.S.C. § 3343(c)(1)(A). However, it also provides for a waiver from disqualification. 50 U.S.C. § 3343(c)(2)(B). This section provides that "[i]n a meritorious case, an exception to the disqualification...may be authorized if there are mitigating factors" authorized in accordance with the Adjudicative Guidelines. *Id.* Guideline J security concerns may be mitigated if an individual can show, in relevant part, that: (1) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; or (2) there is evidence of successful rehabilitation, including the passage of time without recurrence of criminal activity, compliance with the terms of probation, job training, good employment record, or constructive community involvement. Guideline J at ¶ 32(a), (d).

Here, the incident leading to the Individual's imprisonment occurred over 15 years ago. He acknowledged his wrongdoing and served his sentence in prison, all while bettering himself through art, computer, and trade classes. Upon his release, the Individual underwent therapy, alcohol and drug rehabilitation, and an anger management course. Due to this hard work, he was able to complete his supervised probation early. The Individual has participated in training at his employment site, abides by all rules and procedures, and holds others accountable to those rules and procedures as well. Additionally, the Individual has not engaged in any criminal conduct for over 15 years. He has altered his social habits and alcohol consumption, engages in art as a therapeutic technique, cares for his significant other, and contributes to his community through volunteer construction projects. Since the most recent incident of criminal conduct in 2005, I find that the Individual has undergone significant rehabilitation. I find that he has mitigated the Guideline J security concerns, and I additionally find that his disqualification from holding a security clearance pursuant to the Bond Amendment is eligible for a waiver. Guideline J at ¶ 32(a), (d); 50 U.S.C. § 3343(c)(2)(B). As such, I find that the DOE should grant access authorization to the Individual.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at

the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with the Bond Amendment and Guidelines J. Therefore, I 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 grant 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.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals