

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of Personnel Security Hearing)
)
Filing Date: July 19, 2016) Case No.: PSH-16-0067
)
)
_____)

Issued: October 24, 2016

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ 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 or Special Nuclear Material.” As discussed below, after carefully considering the record before me, I have determined that the DOE, at this time, should not restore the Individual’s access authorization.

I. Background

The Individual is employed by DOE as a locksmith at a DOE facility. This position requires the Individual to possess a DOE security clearance. In December 2015, an audit of the Individual’s workspace revealed that the Individual had placed a number of security keys and cores² which had been annotated as destroyed in two databases that tracked keys and cores. Exhibit (Ex.) 6 at 4-5. The audit also discovered that the Individual had made master (test) keys and cores without following mandated procedures. Ex. 6 at 6-7. The Individual was placed on investigatory leave

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter 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 authorization or security clearance.

² A core is the portion of a lock where the key is inserted to unlock the lock. Transcript of Hearing, Case No. PSH-16-0067 (Tr.) at 12. These security keys and cores will be referred to as “keys and cores.”

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

while the facility conducted an investigation regarding the Individual's possible misconduct. Ex. 5. A subsequent report of the investigation (Report) found that the Individual had kept some 300 keys and cores that should have been destroyed, had created unauthorized test keys and cores, and had not accurately entered information into two databases which itemized the status of keys and cores at the facility. Ex. 6 at 5-8.

In February 2016, the local security office conducted a personnel security interview (PSI) with the Individual. Ex. 7. The PSI did not resolve the security concerns regarding the Individual's improperly retaining keys and cores as well as the Individual's falsification of the two facility databases regarding the keys and cores. Consequently, in a June 2016 letter (Notification Letter), the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance and that his security clearance was suspended. Ex. 1. Specifically, the Notification Letter stated that the LSO possessed information falling within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (Criterion L).³

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The LSO submitted eight exhibits (Exs. 1-8) into the record. At the hearing, the Individual presented his own testimony along with the testimony of his division leader (Division Leader), his group leader (Group Leader), and the work planner (Work Planner) for the Individual's work group, along with one Exhibit (Ex. A).

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 (1998) ("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).

³ Criterion L refers to information that suggests 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).

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

An individual must come forward with evidence to convince the DOE that restoring his 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 or her 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a decision that reflects my 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 considering these factors, the Administrative Judge also consults Adjudicative Guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).*

III. The Notification Letter and the Security Concerns at Issue

The LSO cites the Individual’s admissions in the PSI that he failed to properly destroy keys and cores, that he improperly created test keys and cores without management approval, and that for seven years he placed false information in two databases which tracked keys and cores, as Criterion L derogatory information.⁴ Given these admissions, the LSO had sufficient ground to invoke Criterion L. Conduct involving unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

IV. Findings of Fact

The Individual testified that he has been employed as a permanent locksmith at the facility since 2003. Tr. at 145. Because of retirements of other locksmiths and the passing away of the most experienced locksmith, the Individual’s work load increased dramatically. Tr. at 148. When the Individual was contacted about a job, his services were usually needed immediately. Tr. at 150. Without the Individual’s services, the facility’s other mission dependent tasks could not be started.

⁴ In the PSI, the Individual admitted that some of the keys and cores, which should have been destroyed, and that were found in his working area, had been in his possession for approximately one or two years. Ex. 7 at 30.

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

Tr. at 151. In describing his work environment, the Individual described it as a “chaotic situation.” Tr. at 151. The Individual would have to resolve conflicting work requests from the Work Planner and the Group Leader. Tr. at 182. The Individual stated that the “normal atmosphere” at his place of employment was such that the Individual would be assigned difficult jobs, such as testing over 100 cores and keys in a number of different locations at the facility and having the expectation that the job must be performed perfectly. Tr. at 154-55. The Individual believed that his supervisors were under pressure to have jobs performed correctly and not “be pulled on the carpet.” Tr. at 173. The stress on the Individual was increased by the fact that on many occasions, the Individual was the only locksmith possessing the requisite knowledge to resolve problems with certain cores and keys at the facility. Tr. at 152.

The Individual testified that one of the databases the facility used (Database 1) was a basic inventory of cores and keys that also contained information regarding when the cores and keys were created and installed. Tr. at 156. The second database (Database 2) contained information relating to the history of a particular core or key such as who requested the core or key, the locksmith who installed the core or key, a list of those authorized to possess the core or key, and the status of any service request regarding a core or key.⁵ Tr. at 157.

When the Individual received a request to install a new core, the Individual would be required to ensure that the employee making the request had the proper authority and that all paperwork signatures were obtained. In order to show in Database 1 that the key had been destroyed, he had to complete, in Database 2, a service request for the destruction of the key to document the destruction of the key. Tr. at 202. The Individual would make an entry in Database 1 indicating that the replaced core and key had been destroyed and was no longer active. Tr. at 166. However, he would not destroy the core or key until he had all the paperwork needed to complete the entry in Database 2. Tr. at 166, 169. The Individual stored the supposedly destroyed key or core in his locked repository with the intention to finish the paperwork needed to complete the service request entry in Database 2 and then destroy the key. Tr. at 202-203. The Individual believed that his work place environment did not place a high priority on the actual destruction of keys and cores. Tr. at 184.

The Individual testified that he began his practice of retaining cores and keys seven years ago. He believed that he eventually would catch up by getting all of the necessary paperwork and then destroying the keys and cores.⁶ Tr. at 171. However, the Individual started to accumulate more or

⁵ Database 2 was described by the Individual as a “cradle to grave” historical database containing such information as who requested the key or core, the locksmith assigned to the job, forms with signatures of the assigned owner or the key or core and the dates the key or core was installed.” Tr. at 157. Sometimes numerous officials had to sign forms for keys and cores. Tr. at 159.

⁶ The Individual testified that sometime in mid-2014 a new policy was enacted requiring that cores and keys be destroyed within two days of their removal but that his practice regarding retaining the keys and cores had not changed. Tr. at 175, 183-84, 189-90; *see* Tr. at 14, 21, 82-83.

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

more keys and cores because he did not have time to get the needed paperwork. Tr. at 171-72. Because the Individual believed he was “the guru” of all the locksmiths, he did not want to raise the issue of these keys and cores. Tr. at 172-72 (“I didn’t want to show that, you know, that I was falling behind.”)

With regard to the test keys and cores that he had created, the Individual testified that he would retrieve cores from the bin of cores marked for destruction and retain it to be used as a test core to ensure that newly created keys worked. Tr. at 175-76. This was desirable because if he created a key and it did not fit, more paperwork would then be needed to be submitted. Tr. at 176. Additionally he would save time in avoiding the necessity to travel to a particular facility location to determine if the key would work. Tr. at 176. The Individual learned this procedure from experienced locksmiths when he began at the facility. Tr. at 178. The Individual described it as an “unspoken practice.” Tr. at 178. However, the Individual acknowledged that he failed to get proper authorization prior to making the test keys and cores. Tr. at 191.

On the day of the audit, the Individual admitted that he had improperly kept the keys and cores, Tr. at 181. The Individual now realizes that all operational and security policies must be followed and that he should not prioritize one over the other. Tr. at 185. The Individual knows he is not “a guru” and is willing to ask for help. Tr. at 185-86. The Individual testified that he had not been trying to be dishonest with regard to his handling of the keys and cores. Tr. at 186.

The Group Leader, Work Planner, and Division Leader testified that they had frequent interaction with the Individual on the job. Tr. at 11, 59, 61. Each testified as to (i) the extreme work load that the Individual experienced, especially after the death of a senior locksmith and (ii) the Individual’s expertise in locksmithing. Tr. at 15, 27, 61, 125. The Division Leader, who recently assumed the Division Leader position, testified that this work environment was aggravated by his predecessor’s tendency to throw employees “under the bus” when anything went wrong. Tr. at 138. Each confirmed the result of the audit, which discovered over 300 keys and cores in the Individual’s locked repository in the Individual’s work area inside a vault type room. Tr. at 11, 61 73-74, 117-22, 126. They also confirmed that the Individual had made false entries into Database 1 showing that some of the keys and cores had been destroyed when, in reality, they had not been destroyed. Tr. at 19-20, 73, 120.⁷ The Group Leader and the Work Planner also confirmed that the Individual had improperly made test keys and cores. Tr. 18-20, 70-71. The Group Leader, Work Planner, and the Division Leader testified that the Individual immediately took full responsibility for his failure to destroy the keys and cores. Tr. at 25, 74, 134. The Work Planner testified as to his belief that the Individual created “test cores” and “test keys” in order to quickly determine whether a key is correctly cut without the Individual having to make a lengthy trip to a different part of the facility. Tr. at 69-70. The Group Leader and the Work Planner testified as to their belief that the Individual fully intended to destroy the keys and cores but because of his workload was unable to do so. Tr.

⁷ The Report indicated that the Individual had made false entries in both databases. Ex. 6 at 5. In the PSI, the Individual stated that he had made false entries in both databases. Ex. 7 at 23-24.

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

at 41, 87. The Division Leader stated that the Individual, in keeping the keys and cores in his locked repository in a vault type room, was safeguarding them in "the next best thing" short of destroying them. Tr. at 130.

Each of these witnesses testified as to the significant changes in the locksmiths' working procedures that would make a similar failure to destroy keys and cores very unlikely to reoccur.⁸ Tr. at 23, 28, 128. Further, the Group Leader, Work Planner, and Division Leader each testified that they had the highest regard for the Individual's reliability, judgment and trustworthiness. Tr. 26, 46, 54-55, 75, 79, 98-99, 129-30.

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 be not restored.

The Criterion L concerns center on the Individual's failure to follow procedures for the destroying of keys and cores, his improper creation of test keys and cores, and his falsification of entries in Database 1. The Individual does not dispute the facts outlined in the Notification Letter's Summary of Security Concerns.

In mitigation, the Individual has presented testimony detailing the extreme workload he faced along with the expectations of his supervisors. This influenced the Individual to circumvent procedures regarding the destruction of cores and keys, to improperly create test cores and keys, and to enter false information into Database 1. Additionally, the Individual has testified to his changed outlook where he no longer thinks he is an exceptionable locksmith who cannot ask for assistance or seek clarification from his supervisors. The Individual has presented testimony from his supervisors indicating that the Individual is a hardworking and competent employee and that the probability of the Individual repeating such a failure to comply with rules concern the disposition of keys and cores is very small. *See* Ex. A (performance reviews of the Individual indicating a high level of performance). All of the Individual's witnesses testified as to their faith in the Individual's judgment, reliability and truthfulness.

⁸ As a result of the incident and the subsequent investigation, his group has made significant changes regarding its practices regarding keys and cores. The facility now provides extra support so that when keys and cores are replaced, the keys and cores are turned over to another employee who is responsible for destroying them as well as updating the two facility databases. Additionally, there is peer review to verify that the keys and cores have been destroyed and that the appropriate entries have been registered in the databases. Tr. at 20-21.

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

The Individual has also presented substantial evidence that a similar problem regarding keys and cores is unlikely to reoccur since there are now new procedures to prevent such a problem. Further, there is no evidence that his improper retention of supposedly destroyed cores and keys resulted in any lapse of security. *See* Ex. 6 at 7.

However, balanced against this mitigating evidence is the fact that the Individual circumvented the rules regarding keys and cores for approximately seven years. This is a prolonged and significant failure in judgment. Further, there is no evidence that this course of conduct would not have continued but for the external audit. While the Individual has presented evidence indicating that is very unlikely he could fail to comply with rules about destruction of keys and cores in the future, this incident does not just raise concern about the Individual's ability to conform to rules and procedures concerning keys and cores. It also raises concerns about his reliability to comply with all rules and procedures. Further, the conduct at issue persisted until relatively recently (December 2015).

Given the evidence before me, I find that the Individual has not presented sufficient evidence to resolve the concerns raised by the Individual's long-standing failure to comply with rules for a period of seven years. *Cf. Personnel Security Hearing*, Case No. TSO-1108 (2012) (individual's failure to federal tax returns for a period of approximately 11 years and to respond to traffic citations for nine years is not fully resolved by the individual's testimony regarding supposed ignorance of the need to file tax returns or increased awareness of responsibilities to resolve citations); *Personnel Security Hearing*, Case No. TSO-0531 (2008) (concerns raised by the individual's failure to file tax returns for 10 years not mitigated by recent acknowledgment that she must file returns and her recent efforts to submit tax returns). I also find that none of the mitigating factors listed in the Adjudicatory Guidelines are applicable to the present case. *See* Adjudicatory Guidelines, Guideline E (Personal Conduct) ¶ 17.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. 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 find that the Individual has not presented sufficient information to resolve the security concerns raised by the Criterion L derogatory information recorded in the Notification Letter. Thus, I cannot conclude, at this time, that restoring the Individual's suspended DOE access authorization "will not endanger the common defense

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Consequently, I find that the Individual’s access authorization, at this time, should not be restored.

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

Date: October 24, 2016