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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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Case No.: PSH-17-0027

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Issued: August 10, 2017

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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.”¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The following facts are undisputed. The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf. During the 2014 application process for his current position, the individual was asked by the contractor to disclose his employment history. He claimed to have worked at a hospital from June 2004 to September 2008, and at a child

¹An 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>.

care center from September 2008 to May 2013. *See* DOE Exhibit (Ex.) 5. However, when the contractor attempted to verify these dates, it learned that the individual worked at the hospital from July 2002 to September 2005, and at the child care center from October 2010 to April 2013. *Id.* When asked by his employer to explain these discrepancies, he maintained that he began working at the child care center in 2008, but said that his employment was initially “under the table,” and that he was unaware that he could not use the 2008 date as his start date in information that he provided to his employer. The individual did not provide an explanation for the discrepancy as to the end date of his employment with the hospital, nor did he disclose the fact that he had another job between these two periods of employment. *Id.*

As part of the process of applying for a security clearance, the individual completed a Questionnaire for National Security Positions (QNSP) in February 2015. On this QNSP, he revealed that he was employed at a local airport parking facility from October 2005 until September 2010, and that he was fired for stealing money from a cash register.

Because this information involved security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in August 2016. During this Personnel Security Interview (PSI), the individual described the manner in which he stole money from his employer. He said that as a cashier, he would charge customers the full parking rate. However, at the end of his shift, he would falsely represent that some of these customers used coupons that were good for a discounted rate, and then he would pocket the difference between what the customers actually paid and that discounted rate. DOE Ex. 3 at 15, 17-20. He engaged in this practice from late 2008 or early 2009 until approximately September 2010. DOE Ex. 3 at 17, 22. During this period, he stole a total of \$3,100 to \$3,200, with his daily intake ranging from six dollars or less to \$70. Management learned of the individual’s actions when one day, at the end of his shift, he forgot to remove money from the register, and the discrepancy was discovered by an employee working the next shift. The individual was fired and his employer agreed not to have him arrested if the individual made restitution, which he did. *Id.* at 19-23. During the hiring process, he did not inform the contractor about this job or about the reason for his termination because he was afraid that the contractor would not hire him if he did. *Id.* at 30-31.

After reviewing this interview and the individual’s personnel security file as a whole, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. It 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 he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his 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 five exhibits into the record of this proceeding. The individual introduced six exhibits and presented the testimony of his wife at the hearing, in addition to testifying himself.

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 Guidelines E and J of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (*Adjudicative Guidelines*).

Guideline E relates to personal conduct, and it provides that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Guideline J concerns criminal conduct, and it states that such activity also creates doubt about a person's judgment, reliability, and trustworthiness. As support for its invocation of these Guidelines, the LSO cites the information set forth in the preceding section of this Decision.

These facts adequately support the invocation of Guidelines E and J, and they raise serious security concerns. Deliberately providing false or misleading information concerning relevant facts to an employer can raise security concerns under Guideline E, and may be disqualifying. *Adjudicative Guidelines*, ¶ 16(e). Allegations or admissions of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted can raise security concerns under Guideline J, and may be disqualifying. *Adjudicative Guidelines*, ¶ 31(c).

III. REGULATORY STANDARDS

The procedures 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 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).

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. 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. FINDINGS OF FACT AND ANALYSIS

A. Mitigating Evidence

As previously indicated, the individual did not contest the facts supporting the DOE's invocation of Guidelines E and J. Instead, he attempted to demonstrate, through his own testimony and that of his wife, that he is now an honest and trustworthy person who can be relied upon to adequately protect classified information.

The individual testified that, several years before going to work at the parking facility, he was involved in a relationship with a young woman who became pregnant. Believing that the child was his, the individual continued, he and the woman began cohabitating. The couple broke up after the individual allegedly discovered that the woman was having an affair. When he attempted to gain custody of the child, he claimed, he took a paternity test in 2007 and was informed that he was not the father. Nevertheless, during this period, he said, he incurred approximately \$10,000 in debt as he attempted to support the three of them on his eight-dollar-an-hour salary. Hearing Transcript (Tr.) at 28-33.

The individual then testified about his employment with the parking facility and his termination for stealing. His description of the method that he employed in taking the money and of the events that led to his firing was essentially the same as the one that he provided during his PSI. He added, though, that when asked if a particular employee had assisted him, he told his employer that he acted alone. He also said that he borrowed money from his father to make restitution, and that he has since paid off that debt. Tr. at 36-37.

The individual went on to discuss the inconsistencies in his dates of employment at the hospital and the child care center. He said that he started doing "odd jobs" for the child care center, such as cutting the grass, mopping the floors and repairing appliances, in 2008. He was not a salaried employee at this time, but was instead working on a fee for services rendered basis. The individual testified that he did not intend to mislead his employer about the dates of his employment at the hospital and the child care center. He attributed the discrepancies to a poor memory with regard to the hospital, and to a misunderstanding as to when his employment formally began at the child care center. Tr. at 37-41.

After the individual filled out his QNSP, he said, he finally did disclose his employment at the parking facility to the contractor, as well as the reason that he was fired from that job. The individual testified that part of the reason that he did this was because he knew that it was wrong to withhold this information during the hiring process. He also wanted to "come clean" with them so that it wasn't a secret that someone could hold over them in an attempt to get him to act in a way that was contrary to the national security. Tr. at 43-44.

The individual testified that his finances were in order, and that if anyone offered him money in return for compromising national security, he would report the incident to his employer's security officer. Tr. at 48, 54. He further stated that there have been significant changes in his life since his employment at the parking facility. Specifically, he has gotten married, become the father of three children, and graduated from a community college. Tr. at 52, 67; *see also* Individual's Exhibits

(Ind. Ex.) E and F. Finally, he indicated that he realizes that stealing from his employer and misleading a subsequent employer were wrong, and that he regrets these actions. Tr. at 43, 65, 80; *see also* Ind. Ex. A.

The individual's wife testified that the individual was young and made a mistake when he stole from his employer, and that he is now very honest, responsible and trustworthy. Tr. at 12-13. The individual also submitted letters of recommendation from three current or past supervisors, generally attesting to his honesty, trustworthiness, and skill as an employee. Ind. Ex. B, C and D.

B. Administrative Judge's Decision

The evidence in this case establishes that the individual has made significant changes in his life since his employment at, and theft from, the parking facility. He is now a husband and a father, has graduated from a community college, and has apparently established a positive work record, and there is no indication of any further illegal activity in the intervening seven years. This is some evidence of rehabilitation. *See Adjudicative Guidelines*, ¶ 32(d). The individual has also taken steps to reduce or eliminate vulnerability to exploitation or duress by revealing to the contractor his employment at the parking facility and the reason for his termination. *Id.* at ¶ 17(e).

Despite this mitigating evidence, I find that significant security concerns remain regarding the individual's behavior and his honesty and trustworthiness. The individual engaged in a scheme to defraud his employer of a total of over \$3,000 in hundreds of transactions over a period of time of well over a year. This evidences a degree of premeditation and willingness to commit crimes for financial gain that ill-befits a security clearance holder. The individual pointed out, both during his PSI and at the hearing, that he was in a substantial amount of debt at the time due to his attempts to support his girlfriend and her child, and that this motivation to commit illegal acts for financial gain no longer exists due to the higher amount of income from his current position. However, it does not appear that the individual's crimes were motivated by a desire to get out of debt, as most of the proceeds from his illegal activity went to pay for a cruise for the individual and his girlfriend. DOE Ex. 3 at 27, 29. The individual said that he used his student loans to repay his debts. *Id.* at 28.

He allegedly did make restitution for the stolen funds. Nevertheless, the mitigating value of this factor is lessened by the fact that the individual did so to avoid having his actions reported to the police. The individual's age at the time that he stole the money is not a mitigating factor, as he was 23 years old. In spite of the mitigating factors discussed above, the nature of the individual's offenses, the number of fraudulent transactions, the period of time over which the transactions occurred, and the degree of premeditation involved convince me that the chances of him acting in a similar manner in the future are unacceptably high. Significant security concerns remain under Guideline J.

I also harbor serious doubts about the individual's honesty and trustworthiness. He argues that his honesty with the DOE and his eventual provision of an accurate employment history to the contractor are potentially mitigating conditions. *See Adjudicative Guidelines*, ¶17(a) (mitigating factors include that the individual made prompt, good faith efforts to correct the omission or concealment before being confronted with the facts). However, the individual was "confronted

with the facts” in 2014 when the contractor informed him that it was unable to confirm the dates that the individual provided regarding his previous employment, and asked the individual for an explanation for the discrepancies between those dates and the dates that the contractor had uncovered as a result of its investigation. In response to this query, the individual again did not disclose his employment at the parking facility, but instead blamed a faulty memory and a misunderstanding as to when his employment at the child care center formally began. *See* DOE Ex. 5. The individual did disclose the omitted information to the DOE on his QNSP and during his PSI in 2016, and to the contractor soon afterwards. However, I find little mitigation in the individual’s honesty with the DOE since it was a requirement, and since failing to provide accurate information would itself have raised serious security concerns. Furthermore, the individual did not inform the contractor of his deception until two years after he was confronted with the discrepancy in dates, and then only after being prompted to do so during the PSI. *See* DOE Ex. 3 at 34-35. Accordingly, this potentially mitigating condition has not been adequately established.

Furthermore, I find that the individual intentionally continued to provide incomplete or misleading information during the PSI and at the hearing. During the PSI, the individual was asked why he had stolen money from the parking facility. He replied that he was trying to pay off debts incurred as a result of him attempting to support himself, his girlfriend, and her child on a salary of eight dollars per hour. DOE Ex. 3 at 21. However, when confronted with the fact that he had gone on a cruise during the period of time in question, the individual admitted that most of the proceeds from his illegal activity went to pay for the vacation and for “other things.” DOE Ex. 3 at 29.

At the hearing, the individual testified that he didn’t intend to mislead the contractor when he provided incorrect dates of employment at the hospital and at the day care center. Instead, he insisted that the incorrect dates were the result of a “communication misunderstanding” with respect to the day care center, and of a faulty memory with respect to the hospital. Tr. at 39-41, 76.

I did not find this testimony to be credible. According to the individual, he misremembered his dates of employment with the hospital and misunderstood what was asked of him concerning his tenure with the child care center in a way that just happened to entirely account for the period of time that he was employed at the parking facility. I find it particularly hard to believe that the three year discrepancy between the year that the individual claimed to have left the hospital (2008) and the year that his employment there actually ended (2005) was the result of a poor memory. Instead, I believe that the individual was attempting to account for the period of time that he worked at the parking facility so as to avoid any inquiry as to what he was actually doing during this period, and as to why the parking facility fired him. The individual has failed to adequately address the security concerns regarding his honesty and trustworthiness under Guideline E.

V. CONCLUSION

For the reasons set forth above, I find that significant security concerns remain under Guidelines E and J. Consequently, I cannot conclude that granting the individual 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 grant the individual a 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: August 10, 2017