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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: September 26, 2017** )  
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**Case No.: PSH-17-0068**

**Issued: March 7, 2018**

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**Administrative Judge Decision**  
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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) 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.<sup>2</sup>

**I. BACKGROUND**

A Local Security Office (LSO) obtained information showing that a grand jury had issued an indictment charging the Individual with eight drug-related conspiracy charges on May 3, 2016. Ex. 19 at 2. In addition, the LSO obtained information indicating that the Individual had been allowing her adult son to live in her home, even though that son has a history of criminal activity, including illegal drug involvement. The LSO conducted a personnel security interview (PSI) of the Individual on May 11, 2016, which did not resolve these security concerns. Because the PSI did not resolve all of the LSO’s security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge, in order to resolve the substantial doubt regarding her eligibility for 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 Wade M. Boswell as the Administrative Judge in this matter on September 26, 2017. At the hearing he convened pursuant

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<sup>1</sup> Under the Regulations, “Access authorization” means 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 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.energy.gov/OHA>.

to 10 C.F.R. § 710.25(d), (e) and (g), Judge Boswell took testimony from the Individual, her daughter, and her counselor. *See* Transcript of Hearing, Case No. PSH-17-0068 (hereinafter cited as “Tr.”). The LSO submitted 19 exhibits, marked as DOE Exhibits 1 through 19, and the Individual submitted 20 exhibits, marked as Exhibits A through T (hereinafter cited as “Ex.”). After conducting this hearing, Judge Boswell retired, and the Director of OHA appointed me as the Administrative Judge in this matter on February 28, 2018.

## **II. 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 her eligibility for a security clearance. That information pertains to Guidelines E and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (the Guidelines).

Under Guideline E (Personal Conduct), the LSO alleges that the Individual has a continuing association with persons involved in criminal activity. The LSO asserts that the Individual’s sharing of her home with her son when she knew he had a history of illegal drug involvement raises security concerns under Guideline E, ¶ 16(g), which provides that “association with persons involved in criminal activity” may raise a security concern and be disqualifying. This allegation adequately justifies the LSO’s invocation of Guideline E.

Under Guideline J (Criminal Conduct), the LSO alleges that the Individual has been arrested and charged with eight felony offenses: “Conspiracy to sell 300G [(grams)] or more [of] cocaine; Conspiracy to distribute 300G or more [of] cocaine; Conspiracy to possess with intent M/D/S 300G or more;<sup>3</sup> Conspiracy to manufacture 300G or more [of] cocaine; Conspiracy to sell [greater than] 0.5G [of] cocaine in [a] school zone; Conspiracy to distribute [greater than] 0.5G in school zone; Conspiracy to possess with intent M/D/S [greater than] 0.5G in school zone; and Conspiracy to manufacture [greater than] 0.5G in school zone.” Ex. 19 at 1. By its very nature, criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness and calls into question a person’s ability or willingness to comply with laws, rules, and regulations. Guideline J at ¶ 30. These allegations adequately justify the LSO’s invocation of Guideline J.

## **III. REGULATORY STANDARDS**

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that:

The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. *Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.*

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<sup>3</sup> Presumably manufacture/distribute/sell.

10 C.F.R. §§ 710.7(a) (emphasis added). In rendering this opinion, I have considered the following factors:

The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

*See* 10 C.F.R. § 710.7(c). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

The LSO conducted a PSI of the Individual on May 31, 2007. During this PSI, the Individual acknowledged that two of her sons had been arrested for possession of marijuana. Ex. 13 at 17. When the Individual was informed that members of her community had accused her sons of involvement in drug trafficking, she stated that she was unaware of such activities, but was not surprised. Ex. 13 at 17. The Individual indicated that one of those sons was living with her. Ex. 13 at 20. The Individual was warned that she could not continue to associate with her sons if they continued their involvement with illegal drugs, or to have any other involvement with illegal drugs. Ex. 13 at 19, 24. The Individual was then provided with an opportunity to sign a DOE Drug Certification, which she did. Ex. 13 at 21-24.

The LSO conducted another PSI of the Individual on October 17, 2012. During this PSI, the Individual acknowledged that one of her sons, who was living with her, was arrested and incarcerated for evading arrest and cocaine possession. Ex. 15 at 35-36, 42, 65-66. The Individual stated that she was unaware of her son's drug involvement at that time, but mentioned that she had been warned about her son's reputation in a previous PSI and recalled signing a DOE Drug Certification. Ex. 15 at 36, 51, 53. She stated that her son had denied drug involvement when she had discussed it with him. Ex. 15 at 37. The Individual also noted that she had never observed any evidence of drug use or sales occurring in her home. Ex. 15 at 38.

The LSO conducted a third PSI of the Individual on December 12, 2013, mainly to discuss concerns about her finances. During this PSI, the Individual reported that her son remained incarcerated for a parole violation, after being arrested in her front yard for cocaine possession.<sup>4</sup> Ex. 16 at 6-8, 11. The Individual reported that her incarcerated son would live with her if he were to be paroled. Ex. 16 at 7.

The LSO conducted a fourth PSI of the Individual on May 11, 2016. During this PSI, the Individual reported that she was arrested on May 6, 2016, and charged with eight counts of Conspiracy. Ex. 18 at 4. The Individual subsequently reported that this arrest occurred on May 5, 2016. Ex. 18 at 5.

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<sup>4</sup> At the hearing, the Individual testified that her son was arrested in 2012. Tr. at 69, 78.

The Individual reported that the eight counts of Conspiracy that she was charged with involved an alleged conspiracy to market illegal drugs. Ex. 18 at 6. The Individual stated that when the police arrested her son in her home on December 23, 2015, they found items in her home (a Pyrex dish and a whisk) which tested positive for crack cocaine. Ex. 18 at 6-7. The Individual stated that the police charged her because they believed that she knew that these items were in her house. Ex. 18 at 7. The Individual noted that she had never been in trouble with the police before. Ex. 18 at 7-8. The Individual stated that there have never been any illegal drugs at her home, that she has never found any illegal drugs in her home, and that her children all know that she does not tolerate illegal drugs or allow them in her home. Ex. 18 at 9. She further noted that she works 10-hour days and spends a lot of time at her boyfriend's home. Ex. 18 at 9. The Individual reported that her son remains incarcerated, but is welcome to return to her home when he is released. Ex. 18 at 10, 12. The Individual was then warned during this PSI that her association with her incarcerated son raises significant security concerns because of his criminal activity. Ex. 18 at 12-13. The Individual then stated that if she became aware of her son becoming involved with illegal drugs again, he would no longer be allowed to live in her house. Ex. 18 at 15-17. The Individual was also asked to provide a copy of her arrest record. Ex. 18 at 25. That arrest record does not appear in the Record of this proceeding.

The Individual has submitted four affidavits executed by her friends and family members, generally attesting that they have never known the Individual to engage in criminal activity. Ex. B at ¶ 6; Ex. H; Ex. Q; Ex. S. The Individual's incarcerated son, who is one of her co-defendants for the eight conspiracy charges, also submitted an affidavit, in which he states, "[M]y mother has never committed a crime." Ex. J at 1. The Individual has submitted nine affidavits executed by her friends, coworkers and family members, generally attesting to her high moral character. Ex. B; Ex. D; Ex. E; Ex. F; Ex. G; Ex. H; Ex. K; Ex. Q; Ex. S.

The Individual has submitted an email message, dated January 16, 2018, from her criminal defense attorney to the attorney representing her in the present proceeding, in which her criminal defense attorney states:

I presently represent [the Individual] in the Matter of State [] vs. [the Individual]. This was a multi-count indictment involving a large number of Defendants and a large number of criminal counts. In [the Individual]'s case there are several co-Defendants. One co-Defendant of note in [the Individual]'s case is her son, [who] is charged as a co-defendant but also has a number of other charges in unrelated cases. It appears as if [her son]'s cases are close to being resolved but at the time of this email it is not resolved. Throughout the representation of [the Individual] I have been in periodic contact with the Assistant District Attorney assigned to the case. . . [The prosecution] has always taken the position that it is his intention to dismiss or *nolle prosequi* the cases of [the Individual] once there is a plea resolution of [her son's] cases.

Ex. M at 1. The Individual has also submitted a scholarly article challenging the accuracy of the method used to determine whether the residue that the police found on the Pyrex dish and whisk was cocaine. Ex. R. In addition, the Individual has submitted a record documenting her attendance at four Al-Anon meetings. Ex. C at 1.

The Individual submitted a letter authored by a Clinical Psychologist (the Psychologist) who provided four psychotherapy sessions to the Individual between December 14, 2017, and January 4, 2018. Ex. O at 1. The Psychologist reported that the Individual claimed that she had not been involved in any of the alleged criminal activities that she has been charged with. Ex. O at 1. The Psychologist noted that the Individual has had some anger, frustration, and embarrassment surrounding the events that have led to her hearing. Ex. O at 1. The Psychologist reported that the Individual now realizes that she must establish appropriate boundaries with her incarcerated son and that she has let him know that he cannot reside with her when he leaves prison. Ex. O at 1-2. She notes that the Individual has begun attending Al-Anon meetings. Ex. O at 2.

At the hearing, the Individual's daughter testified on her behalf. She testified that she has daily contact with her mother. Tr. at 16. She stated that she does not think her mother would be involved in criminal activity, and that she has never known her mother to be involved in criminal activity. Tr. at 17, 23-24, 26. The daughter testified that being involved in criminal activity would be contrary to the values that the Individual taught her. Tr. at 17-18. She further stated that the Individual will not allow her incarcerated son to live with her when he is released from prison, and that her family supports that decision. Tr. at 18-20, 29, 34.

The Individual testified on her own behalf at the hearing. The Individual acknowledged that she is still charged with eight counts of conspiracy. Tr. at 64. She testified that she never intended to commit a crime or to be involved in a conspiracy, and denied involvement in any criminal activity, specifically denying involvement in the crimes described in the eight counts of conspiracy that she is charged with. Tr. at 39-42, 47, 87, 93. She claims that she has never knowingly been in the presence of any of her children while they were in possession of illegal drugs, and that she has never knowingly associated with individuals in the possession of illegal drugs. Tr. at 43-44, 96. The Individual stated that she had never observed any illegal activity at her home and that she had made it clear to her children that they could not bring illegal drugs into her house. Tr. at 44, 63-64. The Individual testified that, after her son's arrests in 2007 and 2012, she spoke with him and let him know that she cannot have any illegal drug activity at her house; however, she subsequently testified that she did not know that her incarcerated son was involved in illegal activity until his 2015 arrest. Tr. at 42-43, 63-64. The Individual testified that she now realizes that she was enabling her adult children by allowing them to stay with her, and that she has informed her incarcerated son that he cannot move into her home when his incarceration ends. Tr. at 47, 51, 56, 73-74. Tr. at 56. She testified that her Al-Anon meetings have helped her realize the importance of setting healthy boundaries with her son, and that she has the support of her family and friends in setting those boundaries. Tr. at 47-48, 51.

Concerning the charges filed against her, the Individual testified: "I haven't spoken about the specifics with the attorney, I mean. No one has actually dug into the heart of what's going on. All I know is if my son enters into a plea agreement, everything against me will be dismissed, there will be no charges, there will be no trial, and I can -- I won't have to go back into court." Tr. at 50-51, 96. She further stated that she has not been offered any plea bargains at this time. Tr. at 64. The Individual testified that she remembered speaking with DOE employees since 2005 regarding DOE's concerns about her association with individuals active in criminal activities. Tr. at 65-66. The Individual also recalled a 2007 PSI and a 2012 PSI in which she was asked about her sons' illegal drug activities. Tr. at 77. The Individual testified that her son was not living with her when he was arrested with nine ounces of cocaine in 2012, even though he was arrested in front of her

house. Tr. at 69, 78. The Individual testified that she allowed her son to return to her house in 2015 after his release from prison, which was shortly after the death of his brother. Tr. at 69-70, 79. She claimed that she was unaware of his illegal drug activity, because she did not know anything about illegal drugs. Tr. at 70. She testified that he appeared to have few possessions at that time. Tr. at 71. She testified that no one had warned her about her son's illegal drug involvement. Tr. at 73. The Individual testified that police had searched her home for drugs in December 2015. Tr. at 80. The Individual testified that the police "didn't find any drugs or anything in the home," however, she subsequently testified that the police confiscated a whisk and a glass container that they found in a kitchen cabinet with suspected cocaine residue. Tr. at 80-81. She does not know if the whisk and Pyrex container were ever tested for cocaine residue. Tr. at 89. The police did not arrest her son until March 2016.<sup>5</sup> Tr. at 81.

The Psychologist testified at the hearing on behalf of the Individual. She testified that she had met with the Individual on five occasions and found her to be honest and forthcoming. Tr. at 101-102. The Psychologist reported that the Individual had already decided that she was not going to allow her son to live with her in the future when she began her therapy, and that the Individual is committed to establishing healthy boundaries with her son. Tr. at 104, 108. The Psychologist further opined that the Individual has a "very good prognosis" for establishing appropriate boundaries with her family members. Tr. at 128. The Psychologist testified that the Individual feels frustration at being used as a "bargaining chip" in her son's plea bargaining negotiations. Tr. at 125, 130.

At the conclusion of the Hearing, the Individual's attorney indicated that he was awaiting the receipt of a letter from the prosecutor who filed the eight charges of conspiracy against the Individual. Tr. at 136. Judge Boswell agreed to hold the record open until February 15, 2018, in order to allow the Individual to submit a copy of that letter into the record. Tr. at 136-137. However, the Individual never submitted a copy of a letter from the prosecution into the record. On March 6, 2018, the Individual's attorney submitted a copy of an email sent to him on January 22, 2018, by the prosecuting attorney stating in pertinent part:

I have had an offer on the table to [the Individual's son] that if he would agree to take twenty (20) years in prison and resolve all of his cases in Criminal Court, then I would dismiss all of the charges against his mother, [the Individual]. But, it's been about a year. And, I still don't have an answer from [the son] one way or the other. So, [the Individual] may eventually have to go to trial in January of 2019.

Ex. T at 1.

## V. ANALYSIS

The Individual has a long-standing history of close association with family members, including two sons, who engaged in serious and significant criminal activities, some of which have occurred at or near her residence. These concerns led the LSO to conduct PSIs of the Individual on May 31,

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<sup>5</sup> She subsequently testified that he was arrested in April or May. Tr. at 82.

2007, October 17, 2012, December 12, 2013, and May 11, 2016, to discuss its concerns about these associations. The Individual has, through most of her discussions with the LSO and during much of the present proceeding, claimed that she was unaware of her two sons' illegal drug activities, even though she was aware of their drug arrests, and even though the LSO had informed her that members of her community had accused her sons of involvement in drug trafficking. On May 5, 2016, the Individual was arrested and charged with eight counts of Conspiracy, each of which involve various aspects of the illegal drug trade. One of her sons, who often lived in her residence, was one of her alleged co-conspirators. The Individual alleges that the police charged her as a co-conspirator because they believed that she was aware of the illegal drug activities since they believe that some of them occurred in her residence, and because they found two items in her home with what they believed to be cocaine residue.

By continuing her association with her sons who were engaged in criminal activities, allowing her sons to use her residence while they were involved in these criminal activities, and ignoring the LSO's warnings, the Individual exhibited serious defects in judgment, trustworthiness and reliability. Moreover, the serious criminal charges filed against her by the police in May 2016 raise additional, and highly significant, concerns about the Individual's trustworthiness, reliability, and judgment.

The Individual has attempted to resolve these issues by showing that she has obtained counseling and has become active in the Al-Anon organization. According to the Individual, her family, and her Psychologist, the Individual has now gained sufficient insight and understanding to convince her that she cannot allow her incarcerated son to return to her residence and that she must establish appropriate boundaries with him. I am convinced that the Individual has, through a combination of counseling, participation in Al-Anon, and the lessons she has learned from being charged with eight counts of conspiracy, become committed to establishing appropriate boundaries with her sons who engage in criminal activities, and learned the importance of avoiding any entanglement in their criminal activities.

However, the Individual has still been charged with eight counts of Conspiracy for her alleged participation in a drug trafficking enterprise. These charges against the Individual are serious, and raise grave concerns about her trustworthiness, reliability and judgment that must be resolved before restoring her security clearance. While the Individual and her children maintain her innocence, the fact remains that the police have obtained sufficient evidence that she participated in the alleged conspiracy to convince a grand jury to indict her with these eight counts. After a year-and-a-half, these charges have not been dismissed. The only evidence that the Individual has submitted in support of her innocence is her sworn testimony that she was not involved, her children's testimony that she has never been involved in any illegal activity, a 1974 scholarly article questioning the reliability of the process that might have been used to determine whether the residue on the Pyrex container and whisk contained cocaine, and the prosecutor's plea bargain offer to the Individual's son to drop all charges against his mother if he would accept a guilty plea.<sup>6</sup> This evidence does not suffice to resolve the serious doubts raised by the filing of eight counts of criminal conspiracy against the Individual. Those doubts cannot be resolved in favor of the national security without a clear understanding of what led the grand jury to conclude that she was

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<sup>6</sup> I note also that the Individual, an adult in her fifties, has never before been charged with a crime other than a traffic ticket, a fact that militates against her involvement in this alleged conspiracy.

involved in the alleged conspiracy and therefore indict her, and why those charges have not been dismissed. The Individual, citing the fact that the prosecutor has offered to dismiss the charges against her if her son pleads guilty, asserts that the prosecutor has brought baseless charges against her in order to pressure her son to accept the plea bargain. However, accepting this contention as true would require me to assume, without any evidence, that this prosecutor has intentionally leveled baseless charges against an innocent bystander in order to pressure her son to enter a guilty plea. I am unwilling to engage in such baseless speculation. Accordingly, I find that the Individual has not met her burden in this case.

I recognize the possibility that the Individual may ultimately be found innocent of the charges against her. However, the record was not sufficiently complete to resolve the concerns raised by her arrest. The regulations provide that: "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. §§ 710.7(a). The record does not provide sufficient information for me to understand why the charges were filed against the Individual, and to conclude, in a manner consistent with the national security, that the Individual had not been involved in any of the eight alleged conspiracies.

For the above reasons, I find that concerns raised under Guidelines E and J have not been resolved.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and J. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not sufficiently mitigated the concerns raised under Guidelines E and J. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals