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March 19, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

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Case Number: TSO-0041

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for an 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/}

I. Background

The individual is employed in a job that requires that he maintain a security clearance. Because information obtained by the local DOE security office raised concerns about the individual's continued eligibility for access authorization, an investigation of the individual was conducted. As part of this investigation, the individual was interviewed by a DOE Personnel Security Specialist. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for an agency-sponsored evaluation. Based on the results of this investigation, the Manager of the local DOE facility determined that derogatory information existed which cast into doubt the individual's suitability for access authorization. The Manager informed the individual of this determination in a Notification Letter which set forth in detail the DOE's security concerns and the reasons for those concerns. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance.

The individual requested a hearing on this matter. The Manager forwarded the individual's request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The hearing was convened near the individual's job site. Eleven witnesses testified during the hearing. Testifying for the DOE were two security officers, the individual's ex-wife, and a male friend and two female friends of the ex-wife. A minister, the individual's supervisor, a co-worker, a clinical social worker

^{1/} An 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 be referred to in this Decision as access authorization or a security clearance.

and the individual himself testified on behalf of the individual. The social worker testified by telephone at a later date.

II. Statement of Derogatory Information

As indicated above, the Notification Letter included a statement of derogatory information in possession of the DOE that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (f) defines as derogatory any information indicating that the individual has "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a Personnel Qualifications Statement, a personnel security interview, in written or oral statements made in response to an official inquiry regarding [the individual's] eligibility for access authorization, or during proceedings conducted pursuant to § 710.20 through § 710.31, inclusive," of the DOE's Personnel Security Regulations. The Notification Letter alleges that the individual provided "false and misleading" information during his PSI about his interactions with his ex-wife. Notification Letter, Enclosure 1. Specifically, the Letter cites his statements that he had never stalked his ex-wife, that their encounter on May 22, 2002 was "purely coincidental" and that he "was in the area on other business." *Id.* The Letter alleges that the individual was in fact stalking his ex-wife during this encounter, and cites the statements of security personnel in support of this allegation. According to these employees, the individual drove slowly through the parking lot of the building in which the ex-wife worked while visually scanning the parking lot area. The Letter also states that according to the psychiatrist's report, there are discrepancies between the information that the individual provided to the psychiatrist and information provided during the PSI, and that the psychiatrist also questioned the veracity of the individual's account of an incident between him and his ex-wife. 2/

Paragraph (l) concerns information showing that the individual has engaged "in any unusual conduct or is subject to any circumstances which tend to show that [he] 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 [him] to act contrary to the best interests of national

2/ Although the psychiatrist's report was submitted as Exhibit 8 by counsel for the DOE, the psychiatrist did not testify at the Hearing. Section 710.26(l) of the DOE's Personnel Security Regulations sets forth clearly delineated circumstances under which a written or oral statement that is adverse to the interests of the individual may be admitted without providing an opportunity for cross-examination. None of those circumstances is extant in the present case. Therefore, since I believe that considering the psychiatrist's report without allowing the individual an opportunity to cross-examine the author of that report would, under these circumstances, be manifestly unfair to the individual, I will strike the report from the record. Consequently, I will not consider that portion of the Notification Letter that alleges dishonesty or lack of forthrightness during the psychiatric evaluation.

security. Such conduct or circumstances include, but are not limited to, criminal behavior . . . , or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” Under this paragraph, the Letter states that the individual confronted his ex-wife “on numerous occasions” despite the existence of a restraining order barring him from having contact with her, and that he was arrested for violating the order. The Letter also alleges that the individual has had altercations with “disinterested parties” and has made threats toward his ex-wife’s coworkers and friends.

III. Findings of Fact and Analysis

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all the 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 restoring the individual’s 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 his 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 Personnel Security Hearing 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 restoring his access authorization “would not endanger the common defense and security and would 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. After careful consideration of the factors mentioned above and of all the evidence in the record in this proceeding, I find that the individual has failed to make this showing, and that his security clearance should not be restored at this time.

As was made evident by the testimony at the hearing, the events discussed in the Notification Letter occurred during the bitter dissolution of the individual’s marriage to his ex-wife. The ex-wife testified that in 1996, after the marriage “had been declining for years,” she decided to file for a divorce and move with the couple’s children away from the individual and into an apartment. Hearing Transcript (Tr.) at 37-38. During her first night in the apartment, she stated, there was a “confrontation where he was very violent, banging on the door [of her apartment] and making threatening remarks and I had to call police officers. The following day I filed for a restraining order because the incident frightened me.” She added that the threatening remarks concerned “the harm he would inflict upon me if I didn’t bring his kids back and if I didn’t try to settle this.” Tr. at 38.

Later that year, the couple reconciled, but, according to the ex-wife, the marriage was never the same. Prior to 2000, the ex-wife continued, the individual began having an affair with the woman who was to become his current wife, and a child was born of that affair. Tr. at 39. Subsequently, the ex-wife decided to divorce the individual, she said, because he would not agree to end his relationship with the child's mother. Tr. at 40. Because both parties wanted the divorce to be amicable, the ex-wife continued to see the individual socially and to engage in activities with the individual. Tr. at 41. However, the ex-wife decided that since she had filed for divorce in December of 2000, it was time to end her social relationship with the individual, and she informed him that she would not be accompanying the individual and their daughter on a trip to a nearby city. Tr. at 42.

She testified that this angered the individual, who, on the day of the trip, came over to the house where the ex-wife and their daughter were living, began arguing with the ex-wife, and left without taking their daughter. The ex-wife then left to attend a seminar at her church. *Id.* The individual came to the church, and, according to the ex-wife, angrily insisted that she leave the seminar, get their daughter, and bring her to the church. *Id.* When the ex-wife told the individual that she would not go get their daughter until after the seminar, she said, "he assaulted me, pulled me, threw me on the floor." She explained that

As I was turning to walk away and the floor was not carpeted, it is a tile floor, and it was downstairs in the basement of the church. The people who were conducting the seminar, and other church members, were in the fellowship hall. And as I turned to walk away from him, he grabbed me by the back of my clothing and he flung me to the floor. And then he got over me and he put his fist in my face and he said, "I'll do it." At that time some other people heard the fall and when they came in there he ran out of the church. And that was basically the beginning of the violence, the hostility in the divorce. It did not have to happen that way.

Tr. at 43. When asked whether there was any chance that the incident could have been accidental, she replied that the "difference in our size, I could say maybe he did not realize the force that he was using, but that became untrue to me when he straddled me and had his fist in my face, that told me it was intentional." Tr. at 44.

After this incident, the ex-wife sought and received an order of protection from a local court. Initially, she said, the provisions of the order allowed for some social contact with the individual. Tr. at 45. However, after other incidents, the ex-wife went back to court and had the order changed to one of protection with no contact. Tr. at 46. These incidents included the individual's allegedly placing a "For Sale" sign in the yard of the house in which the ex-wife was living (Tr. at 47), a visit by the individual to the house for the stated purpose of retrieving some papers, but which the ex-wife believes was for the purpose of allowing the individual access to the garage so that he could unlock a window there in preparation for a later, surreptitious entry (Tr. at 48), and a series of telephone calls to the ex-wife during working hours in which the individual complained about what she "hadn't done right with the children or one particular incident he said I was smelling myself and just crazy stuff that were constant complaints." When asked if there was anything threatening about the calls, she replied that "there was a time when I allowed our daughter to go out of town for vacation

because the whole incident was stressful to her and it was summer time and she was out of school. Well, he had a problem with that, so there were threats that if I didn't tell him where she was or if I didn't bring her back, I was going to be sorry for that." Tr. at 49-50.

The ex-wife went on to state that the individual "totally ignored" the order of protection without social contact. Tr. at 50. The first violation of the order occurred when the ex-wife encountered the individual at a local post office. Although she left the post office and tried to avoid the individual, "he yelled at me that if I didn't tell him where our daughter was that I was going to be sorry. . . . And that was strictly a violation [of] the restraining order. I never said anything to him because he was not to have any kind of contact with me. The order stated that anything he needed to say to me was supposed to go through my attorney." Tr. at 51. Another violation allegedly occurred when the individual "followed [the ex-wife and their daughter] as we were leaving [town] and went to McDonald's to eat an ice cream and he pulled to the bank across the street." Tr. at 51-52. Knowing that she had to go through a nearby gas station to get home, the ex-wife testified, the individual then waited at the station. "And as I was inside paying for my gas," she continued, "he was at the van that I drive yelling at our daughter to open the door and then he came inside [the station], once she would not open the door, he came inside. He started to have a conversation, but I had my cell phone with me and I told him if he didn't leave me alone, I was going to call 911."

The ex-wife also described a 2002 altercation that took place between the individual and a male friend of the ex-wife. She testified that she went to the local county clerk's office on her lunch hour to get a registration and tags for her van, and invited the male friend to ride with her. When the two of them arrived at the clerk's office, the ex-wife went into the building and the male friend remained in the parked van. From inside of the building, the ex-wife saw the individual drive up in his vehicle, get out, and walk toward the van. Fearing that the individual was going to initiate a confrontation, the ex-wife opened the door of the clerk's office and told the individual to get away from her van. The individual and her friend began to shout, with the individual claiming that the ex-wife's friend had a knife and was trying to cut him. Tr. at 54-55. When asked whether her friend had a knife, the ex-wife replied, "No. I looked at [her friend's] hands and he didn't have a knife." Tr. at 55. After going into nearby business establishments in an attempt to garner witnesses, the ex-wife continued, the individual approached the friend, began shouting at him, and the individual allegedly "hocked and spat in his face." *Id.* ^{3/} The friend asked if the individual wished to fight, and, by way of reply, the individual allegedly "hocked and spat in his face again." Tr. at 56. At that point, the ex-wife stated, she "lit into [the individual] and [her friend] held me back because I could not believe he was doing that." *Id.* The police arrived and ended the confrontation.

Two security officers at the ex-wife's place of employment testified about another encounter in 2002 between the individual and his ex-wife. Both officers stated that they had been informed of the ongoing problems between the individual and his ex-wife, that they had been provided with pictures of the individual, and that they were not to allow the individual access to the facility at which she

^{3/} By "hocked," the ex-wife demonstrated that she meant the act of gathering saliva in the mouth in preparation for spitting.

worked. Tr. at 10-11, 23. The first officer testified that he was patrolling the parking lot outside of the ex-wife's building when he saw the individual driving very slowly through the lot. He stated that the individual was scanning the parking lot "and he drove on around and came on through very slow, went down to the post office, turned around in the parking lot and came out and came back through our parking lot still driving very slow." Tr. at 12. He then parked nearby, and when the ex-wife left her building, the officer tried to get her attention to tell her that the individual was nearby. However, he was unable to do so, and when she drove off of the parking lot, the individual ran a red light to pull right up on her bumper, with a distance of about a half a car length between them. The officer, who had been instructed to follow them and insure the ex-wife's safety, further testified that "when we got to the next red light they made a left and he was still on her, [and] by the time we got to the next one that light stopped her and he was still directly behind her." Tr. at 13-15.

The second security officer also testified that the individual was parked in a place near the ex-wife's job site, and when she left several minutes later, he "went against the red light and fell in behind [the ex-wife], was following her. At that time the . . . building security complex manager advised us to go follow [her] and bring her back to the . . . complex." Tr. at 25. He added that the individual was following at a distance of "less than a car length," Tr. at 27, and that they had had reports of other sightings of the individual in the parking lot of the ex-wife's job site. He explained that

We have had reports that he has been in the parking lot and stuff and, most of the time, when we got here he was already gone, you know, where we have seen, I think at one time we had four different vehicles that he was seen in that we were told to watch for.

Id.

One of the ex-wife's female friends also testified. She stated that in 1996, she helped the ex-wife move away from the individual and into an apartment. She then spent that night in the apartment with the ex-wife because "she was afraid of being alone and afraid of what her husband would do . . ." Tr. at 147. Then

About four o'clock in the morning there was banging and screaming at the door and it was her husband screaming to let me in, give me my kids. And just making a real, being really loud and obnoxious to where [the ex-wife] called the police and they were already on their way because one of the neighbors had called them already because of the way he sounded violent or angry.

Id. She added that he came back later that morning, and continued banging on the apartment door and yelling. Tr. at 148.

Several months later, the friend continued, the individual allegedly threatened her and her daughter by telephone in a message that he apparently left on the daughter's answering machine. The friend testified that she had heard the message, and that the individual had told the friend's daughter "'I want you to know I'm going to get you! I'm going to make your life a living hell! I'm going to make

your mother's life a living hell! I'm going to get her!'" She added that the individual's tone of voice was angry and hostile. Tr. at 149.

The friend also described two instances during which she believed the individual was "stalking" her. The first instance occurred in 1999. The friend testified that she

went into the credit union and I noticed that he was in there and I . . . just left and went out and got in my car and over in the corner of the parking lot they have cars there that are for sale. And they had, I believe it was a van, and I wanted to see what kind it was, so I drove on over there and stopped and got out. And then his truck, he was in his truck, and he pulled over and stopped and just sat in his truck glaring at me. And I walked around and got the information I wanted. Didn't acknowledge him.

Q. I'm sorry?

A. I did not acknowledge him. Got back in my vehicle and decided to go to [a local restaurant] for lunch, so I went down the side road and down the little road and he just followed me down there.

Tr. at 150-151.

The second instance also involved an encounter at the credit union. The female friend explained that she and a co-worker stopped at the credit union on their lunch hour, and the co-worker went in to transact some business. The friend said that she

saw [the individual] come out . . . and he drove behind my vehicle and stopped for a few seconds and went on his way. And then went out onto [an adjacent road], and he drove back and forth twice on there while I was waiting for [the co-worker]. At that time, after he went by about twice, my son pulled in next to me and started talking. . . .And I said 'Oh, [the individual] is stalking me again, you know, driving back and forth' He says 'that brown, Mazda pickup truck?' And I didn't know how he knew. And he said he went by four times since I pulled in, he saw him in his rear view mirror.

Tr. at 151-152.

A second female friend testified that after helping the ex-wife move one evening in 1996, she and another woman were followed by the individual after they left the ex-wife's residence. When asked whether the individual had ever behaved in a threatening manner towards her, she replied that she and another woman

were at [the ex-wife's] house and he chased us all the way back to [a nearby town]. We went into the police department and he didn't follow us in there but he chased us all the way back to [town] and was trying to get up beside us and make us pull over. For what reason, we don't know, other than that we were helping [the ex-wife].

Q. Was he actually trying to run you off the road?

A. He didn't try to bump us, or anything like that, to run us off the road. He chased us all the way back to [town].

Tr. at 169-170.

A male friend of the ex-wife then testified. He stated that the ex-wife had revealed to him that she and the individual were having marital difficulties, and that he had urged her to take all necessary steps to keep their marriage together. He added that, one evening in March or April 2001, the individual made an unannounced visit to the male friend's residence and informed the male friend that he did not want the male friend to have any further contact with his then-wife. A few weeks later, the male friend continued, he started to receive threatening telephone calls from the individual. He said that the "phone calls were in the sense of; 'I told you I don't want you talking to my wife. If you continue, I'm going to take care of you.' As a matter of fact, one time he called me and told me to come and meet him somewhere and we could get it on." Tr. at 177.

Subsequent to the individual's visit in Spring 2001, the male friend continued, the individual followed him by car on at least two occasions. On the first occasion, the individual allegedly followed the male friend

after work, and at first I didn't think it was him, so what I decided to do was pull over to the side of the road. When I pulled over, he pulled over and I just waited and he waited.

Q. How long did you wait?

A. I'd say about a minute. a minute to two minutes, you know. I pulled off, he pulled off. I slowed up, he slowed up.

Q. How long did this take place? How long did it last?

A. I would say maybe five or ten minutes.

Tr. at 178. On the second occasion, the male friend testified that he was driving at highway speeds on a nearby interstate highway, and

I looked up and here come [the individual] and he got right behind me and had his fist raving and taunting and pointing his finger and he pulled to the side of me and pointing his finger and just taunting me. And then he swerved over in front of me and I had to hit my brakes to keep from hitting him, then he slowed up and I had to swerve around to miss him and then he took the exit and left.

Tr. at 180. The friend added that he reported this incident to the state highway patrol, but was informed that since there were no other witnesses and the encounter was not observed by an officer, they could not do anything. Tr. at 181.

The male friend also described two face-to-face encounters that he had with the individual. The first occurred while the ex-wife's friend was working out at the local civic center facility. He stated that

he saw the individual, and commented to him that he was happy to hear that the individual was going to church. This comment appeared to agitate the individual, he added, and the individual followed the male friend to a nearby running track and

[a]s we continued to talk, he sort of got real ugly and started making threats about my family. He knew where my mother lived, her phone number and stuff like that, my children. And I just stood up and started praying for him. And I held my hands up and he hit my hand. And I asked him why he hit me. And he just kept on and kept on and arguing and being ugly. And as people walked on the track, I said, 'please tell this man to leave me alone.' And then I proceeded to walk away. But as I walked away, I decided to go to the police department and inform the police what [the individual] did. . . . But during the same time, [the individual] also called the police and informed them that I hit him. But I was on the track in my workout clothes. I was there for a purpose.

Tr. at 179-180. The second encounter was the incident at the county clerk's office previously described by the ex-wife. The male friend testified that he and the ex-wife went to lunch and afterwards, he rode with her as she went to pick up the tags for her car. As he was sitting on the passenger's side of her car outside of the clerk's office cleaning his fingernails with a knife, the individual came to the window "with a threatening gesture." Tr. at 181. The friend explained that the individual said "Boo!" and reached in the window at the male friend. The male friend then put the knife to the individual's throat "because he startled me and scared me And he had already been threatening me, so I didn't know what he was planning on doing." Tr. at 181-182. At that time, the ex-wife came out of the clerk's office and began arguing with the individual. When the friend got out of the car, he added, the individual "turned back around and started battering me and he spat in my face." Tr. at 182. The police then arrived and the altercation ended. The police talked to both the individual and the male friend, and they told the male friend that although the individual stated that he was also at the clerk's office to pick up tags, he did not have the necessary paperwork in his possession. Tr. at 183-184.

During his testimony, the individual denied that some of the alleged instances of "stalking" set forth above actually occurred, and offered differing accounts of, or explanations for, other incidents. With regard to the telephone message that the individual left on the voice mail of a daughter of one of the ex-wife's friends, the individual explained that after the ex-wife returned from a weekend stay in a nearby city, the individual found a book among her personal effects in which she had recorded some of the details of what the individual believed was a romantic liaison, including, he testified, where she was staying, the name of the man with whom she was meeting, and the time they were to meet. Tr. at 238. The name and telephone number of the daughter of the ex-wife's friend was also written in the book, and the individual admitted that he called her and stated "that she needed to stay away from [his] family affairs," and "that if she didn't, [he] would make her life miserable." *Id.*

The individual's account of his early morning visit to the ex-wife's apartment at the beginning of their 1996 separation differed significantly from the testimony offered by the ex-wife and the friend who was with her that night. He testified that he had traveled to visit his family in another state, and

he received a call informing him that there was a moving van in front of his house and a large number of people in his front yard. After confirming this in a telephone conversation with a neighbor, the individual then drove back to the house that he and the ex-wife had shared, arriving at “three-thirty or four o’clock” in the morning. He stated that he went to the ex-wife’s apartment, with a police escort, to retrieve his children, explaining that he had “already discussed that with her. I told her she could [move out], but the kids could not go.” Tr. at 243. The policeman spoke to the ex-wife’s friend, who was spending the night with the ex-wife, but neither he nor the individual spoke to the ex-wife. After the officer informed him that there was nothing more that the officer could do, he left. The individual denied having threatened the ex-wife, as was averred by the ex-wife when she obtained an order of protection the following day. Tr. at 244.

It was apparently on this same evening that the individual followed the ex-wife’s second female friend, as she had previously testified. He explained that when he got back from visiting his family,

I went to the house, the door was open, the house was ransacked I noticed a car out in front of the house and I went out and the car left And I got behind the car and followed the car And my first impression was that since the door was open, I felt that they were in the house stealing and I didn’t know who it was at the time.

Tr. at 245. He indicated that he followed the car to find out who was in it and what they were doing. Tr. at 246.

Regarding the incident during which he allegedly assaulted his ex-wife at the church, the individual testified that he went to her home to pick up their daughter and take her to a nearby city. When he arrived, their daughter was not ready, so he returned to his residence, “and the plan was that [the ex-wife] was to bring her to [the individual’s] house” when the daughter was ready. Tr. at 256. Eventually, he continued, he got a call from the ex-wife in which she informed him that she was running late for a seminar that she wanted to attend at a local church, and she told him that he would have to meet her and get their daughter at the church. However, when he arrived at the church, his daughter was not there. The individual located his ex-wife in the basement of the church, where the seminar was being held. As they stood near the exit,

we were arguing about who was going to get her and why she didn’t bring her to the church. And I had her by the arm, I grabbed her by the arm, and she proceeded to walk away, she said, “Turn me loose.” And I turned her loose and she fell. And I reached to help pick her up and her exact words were “Don’t touch me.”

Tr. at 258. The individual added that he did not hit his ex-wife, threaten to hit her or raise his hand to hit her.

The individual then discussed his encounter with his ex-wife outside of the post office, during which he allegedly violated the Order of Protection without Social Contact that was in effect at that time. He stated that when he saw her, they were on opposite sides of the road. “And my question to her was ‘Where is my daughter?’ And she just ignored me. I said, ‘[ex-wife’s first name], you know I’ve

got custody, I have got temporary custody of the kids every weekend.’ And I asked her about the daughter again and basically that was it.” Tr. at 265. The individual admitted that he was angry at his ex-wife because she had allegedly refused to honor a temporary court order granting the individual custody of their children on weekends, and specifically because she “took [their daughter out of school] and I had no clue where she was.” Tr. at 266. However, he maintained that he made no threats, and used no harsh words or force. *Id.* He said that he was issued a citation for violating the Order, which was later dismissed. Tr. at 267, 268.

The individual then discussed the incident at the parking lot of the ex-wife’s place of employment. He said that he had been trying to contact the ex-wife to tell her that he would pick up their daughter from school, but had been unable to do so. After leaving work, he decided to

go in the post office or the credit union, I go over there a lot and do business over there. I saw a group of people standing in the parking lot, which is not right in front of [the ex-wife’s job site] but over where security is. And I saw . . . some other folks right in the parking lot there, and . . . we waved and I drove on through because they caught my attention. I went on through and went down to the credit union, or whatever, and came back and I turn in the parking lot [at the ex-wife’s job site] and I see [the ex-wife’s] van. And I thought, oh, she is over there. And my intention was to go to Home Depot anyway, but I saw her, she wasn’t out there and I looked at my watch or my cell phone and thought she is probably getting off shortly. So I went through the parking lot and came back around . . . and she was coming out or was about to come out at that time. And I followed her and my objective was . . . to let her know that I’m taking [their daughter] with me.

Tr. at 271-272. The individual added that he didn’t recall running the red light, and that there was no order of protection in effect at that time. Tr. at 272, 273.

Concerning the allegations made by the ex-wife’s first female friend, the individual denied ever having followed her. He indicated that their encounter in the credit union was accidental, and said that he

walked out and she came out and I know she was looking at a car and I pulled up because I wanted to see. They have a parking lot over there where they sell “repos” from the credit union. And she was looking at the car and I pulled up, I was going to look at the car too, but I stayed in my truck and waited until she left. And then I went and looked at the car.

Tr. at 280.

The individual then addressed the allegations made by the ex-wife’s male friend. He stated that during his argument with the male friend on the track near the civic center, the male friend “took his hand and put it across my head. He put his hand up and I knocked his hand down and I said, ‘Don’t

put your hand on me.” The individual then called the police, but was told that since no blows were exchanged, no action would be taken against the male friend. Tr. at 282-283.

With regard to their confrontation at the county clerk’s office, the individual testified that he had gone there at lunch to get tags for one of his vehicles. He happened to see his ex-wife’s van parked near the clerk’s office, and saw the male friend in it. When the individual said “Boo!” the male friend “jumped out of the truck. He didn’t draw a knife on me from the window, he jumped out of the truck and pulled a knife.” Tr. at 284. A heated exchange followed, and witnesses intervened and separated the two. The individual denied that he intentionally spit on the male friend, but admitted to having used poor judgement in approaching and speaking to him. *Id.*, Tr. at 291.

Finally, the individual stated that he visited the male friend’s house because he found the friend’s telephone number on the individual’s caller ID unit, and because the ex-wife’s cellular telephone bill showed a large number of calls from her telephone to the friend’s job site or residence. At first, he said, the male friend denied knowing the ex-wife. Then, he admitted that the ex-wife was “an acquaintance,” and that the ex-wife kept calling and keeping him awake at night talking about her marital difficulties. Tr. at 287-288. In general, the individual contended that his encounters with the witnesses called by the DOE had been accidental in nature, and that in some instances, they had lied or exaggerated in describing his actions. Tr. at 290-299.

The minister, the individual’s supervisor, and a co-worker also testified on the individual’s behalf. The minister said that she provided marital counseling for the individual and his ex-wife approximately four years ago, and that the individual had been honest and truthful in his dealings with her. She added that she had seen the ex-wife on an individual basis in social settings during this time, and that she had not mentioned any violent or threatening actions by the individual. Tr. at 206-214. The supervisor and co-worker also attested to the individual’s honesty and trustworthiness. Tr. at 216, 229.

Approximately five weeks subsequent to the testimony recounted above, the hearing was reconvened and a clinical social worker testified by telephone on the individual’s behalf. She stated that she has met with the individual on a weekly basis to discuss issues regarding his suspended clearance, the hearing, and his dealings with his ex-wife. Supplemental Hearing Transcript (Sup. Tr.) at 5. She diagnosed the individual as having suffered from an Adjustment Disorder with Depressed Mood, Sup. Tr. at 14, but said that since their first meeting, his outlook has improved substantially. Sup. Tr. at 17. The individual has taken some responsibility for his reactions to perceived provocations, Sup. Tr. at 15, is managing provocation better, Sup. Tr. at 10, and, in the social worker’s opinion, has no mental or emotional problems that should call into question his suitability for a security clearance. Sup. Tr. at 8.

After fully considering all of this testimony and the record as a whole, I find that the individual has not adequately addressed the DOE’s security concerns under Section 710.8, paragraphs (f) and (l) of the personnel security regulations. Concerning paragraph (f), I conclude that the individual “deliberately misrepresented, falsified, or omitted significant information” during his PSI. During

that interview, he implied that his 2002 parking lot encounter with his ex-wife occurred because he was in the area conducting other business when his ex-wife happened to be getting off from work.

Well, . . . I went through, . . . went to the, I was in the Credit Union and came back, went through the parking lot, went to Home Depot, came back, and then [the ex-wife] came out in front of, I don't know if she was ahead of me or . . . behind me at first, but she came out of . . . the . . . driveway right here in front of the building here. . . . I was behind her.

Q: Just another coincidence?

A: I guess so, and . . . I had no contact with her, and when I saw her I said, 'Oh, well, that's [the ex-wife]'

PSI at 40. He said that he wanted to talk to the ex-wife because she had not responded to a letter that the individual had sent in which he indicated that he wanted to take their daughter on an out-of-town trip. 4/ *Id.* He also added that he was in the lot "probably . . . 30 seconds at most," and that he did not circle the parking lot, but instead "left the Credit Union, went through the parking lot, went to Home Depot, came back," driving straight through the parking lot twice. PSI at 41.

However, based on the testimony of the two security officers, I believe that the individual's primary intent during this incident was to confront his ex-wife. The first security officer testified that he saw the individual driving very slowly through the parking lot, "just viewing the parking lot area and he drove on around and . . . went down to the post office, turned around in the parking lot and came out and came back through our parking lot still driving very slow." Tr. at 13. He further stated that the individual "didn't go to the Home Depot parking lot at all." Both he and the second security officer testified that the individual did not transact any business at the Home Depot, and that he parked nearby until the ex-wife emerged from her place of employment and drove away, whereupon he ran a red light and followed her. Tr. at 13, 24-25.

The individual admitted that he not been completely honest when describing this incident during the PSI, Tr. at 295, and he attempted to justify his misleading description by claiming that it was a reaction to what he perceived as a hostile interview by the personnel security specialist. Tr. at 273. 5/ It is true that, to ascertain the facts in a given situation, an interviewer may aggressively question

4/ However, at the hearing, the individual testified that he wanted to talk to the ex-wife about picking their daughter up from school so that he could take her out to dinner, and that he followed her as she left the parking lot because he had been unable to reach her by telephone. Tr. at 269.

5/ At the hearing, the individual indicated that one of the reasons that he considered the PSI "a hostile situation from the minute I entered the room," Tr. at 273, was because the Personnel Security Specialist offered the individual the option of taking an anger management class. *Id.* However, it is quite possible that this administrative review would not have occurred had the individual taken, and successfully completed, such a class.

a clearance holder, and point out any perceived inconsistencies in the answers given. However, even if I was to accept the individual's characterization of his PSI as accurate, I could not agree that the individual was justified in offering information that he knew to be false or misleading. Much of the information that the DOE relies on in making security determinations is obtained from clearance holders. In order to ensure the accuracy of those determinations, individuals must give to the DOE information that is as accurate as possible. Prior to the PSI, the individual was informed of the importance of providing accurate information, and signed a statement which set forth the criminal sanctions that could be imposed if he knowingly made false or misleading statements. I find that the individual has not sufficiently addressed the DOE's security concerns under paragraph (f).

I also find that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress within the meaning of paragraph (l) of the DOE's personnel security regulations. In addition to the misleading information that the individual provided during the PSI, certain aspects of the individual's testimony at the hearing cause me to harbor substantial doubts about the individual's honesty and candor. Specifically, I am troubled by the inconsistencies between that testimony and the testimony of the ex-wife and the male friend about the altercation at the county clerk's office. As previously stated, both the ex-wife and the male friend testified that during the confrontation at the county clerk's office, the individual deliberately spat on the male friend. 6/ However, if the individual's version of the events is to be believed, he just happened to be at the clerk's office getting new tags on the very day and at the very time that his ex-wife and her friend were there, and he did not intentionally spit on the male friend. I am also disturbed by the number of instances in which the various witnesses testified that the individual followed them or acted in a threatening manner toward them, but in which the individual replied that their encounter was accidental, or his actions misinterpreted or exaggerated. I find it more likely that the individual was engaged in threatening behavior toward the ex-wife and the other witnesses than that the meetings were coincidental and his actions misunderstood. In general, I did not find the testimony of the individual to be credible. During the hearing, I was made acutely aware of the enmity that existed between the individual and his ex-wife, and I realize that such strong feelings can, consciously or unconsciously, influence testimony. For this reason, I give particular weight to the testimony of witnesses other than the divorced couple, and I note that the individual's account of the incidents described above is largely uncorroborated.

6/ I note that an apparent inconsistency also exists between the testimony of the ex-wife that the male friend did not have a knife during the altercation, and the admission of the male friend that he was so armed. However, the ex-wife did not witness the entire encounter, and it is possible that the male friend had put the knife away by the time that the ex-wife emerged from the clerk's office. I further note that this inconsistency weighs against the individual's unsupported allegation that the ex-wife and her male friend conspired to present false testimony about the incident. Tr. at 291.

I further conclude that the individual's threatening behavior toward his ex-wife and her friends evidenced a disrespect for the law, and, in at least one instance, a disregard for their personal safety. In the summer of 2001, the ex-wife obtained an "Order of Protection Without Social Contact" against the individual. Under the terms of this Order, the individual was "enjoined from coming about the [ex-wife] for any purpose," and was specifically prohibited from "stalking" her or communicating with her in any manner except through their attorneys. DOE Exhibit 16. Subsequent to that Order, the individual and his ex-wife had their encounter at the post office, during which he admittedly spoke to her. Although the misdemeanor citation that the individual received as a result of this incident was later dismissed, with the individual paying court costs, DOE Exhibit 12, I believe that the individual's actions demonstrated a troubling lack of respect for the court order. More disturbing still was the individual's driving encounter with the ex-wife's male friend. While traveling at highway speeds, the individual pulled over in front of the male friend's vehicle and slowed down, causing the male friend to apply his brakes and swerve in order to avoid hitting him. This act could easily have resulted in serious injury to the individual, the male friend, or to other drivers, and demonstrated a serious defect in judgement, if not a conscious disregard for the law. The security concern raised by this behavior is that if the individual is willing to act without regard to legal requirements in his personal life, he might be more likely to disregard legal and regulatory requirements for the handling of classified information. The security concerns raised by the DOE under paragraph (l) remain unresolved.

IV. Conclusion

As explained in this Decision, I find that the individual has not presented evidence that is sufficient to allay the DOE's security concerns. The essentials of the accounts given by witnesses at the hearing remain uncontradicted. It is clear from the record in this matter that the events in question occurred during the particularly acrimonious and bitter dissolution of a marriage, and I find this to be a mitigating factor. I am also encouraged by the individual's decision to seek counseling. However, I am not convinced that these factors outweigh the serious concerns described in the Notification Letter. Based on the record in this proceeding, I am therefore unable to conclude that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: March 19, 2004