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October 30, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 17, 2002

Case Number: VSO-0560

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the Individual") to retain 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." A local Department of Energy Security Office (DOE) suspended the Individual's access authorization under the provisions of Part 710. For the reasons stated below, I find that the Individual's access authorization should not be restored.

I. BACKGROUND

The present proceeding resulted from an Inspector General (IG) investigation, which revealed that a co-worker of the Individual had intentionally provided misleading information to a loan officer in an attempt to obtain financing for a real estate transaction. During an ensuing investigation, it came to DOE's attention that the Individual had aided her co-worker's scheme. A Personnel Security Interview (PSI) of the Individual was conducted on April 8, 2002 (the April 8, 2002 PSI). The April 8, 2002 PSI failed to resolve DOE's security concerns about the Individual. Accordingly, the Individual's access authorization was suspended and an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9.

On May 20, 2002, the DOE issued a letter notifying the Individual that the DOE possessed derogatory information that created a substantial doubt concerning her continued eligibility for access authorization (the Notification Letter). The Notification Letter charges that the Individual has "engaged in unusual conduct or is subject to circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation, or duress which may cause [her] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). Specifically, the Notification Letter alleges:

[the Individual] engaged in deception *when she gave permission* to [the co-worker] to use her name for the purpose of employment verification. An official DOE letter dated March 27, 2002 was used to provide false information to a mortgage company regarding employment status. The letter identified [the Individual] as the Human Resources Manager and the sender of the letter. [The Individual's] signature

was forged. [The Individual] admitted that *she consented* to this deception in order to help a friend.

[The Individual] admitted to a second act of deception when she pretended to be from DOE Human Resources during a phone call. [The Individual] stated that after viewing the caller identification (ID), she determined that the caller was from the mortgage company and she answered the phone with, 'Human Resources.'

Notification Letter at Enclosure 2 (emphasis supplied). The Individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called two witnesses: a DOE Personnel Security Specialist and the Individual. The Individual called one witness: the co-worker. The Individual also testified on her own behalf. The record of this proceeding was closed on September 19, 2002, when OHA received a copy of the transcript of the hearing.

II. STANDARD OF REVIEW

The Hearing Officer'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). Part 710 generally provides that "[t]he decision as to access authorization 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." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring her 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). In the present case, the Individual has not convinced me that restoring her security clearance would not endanger the common defense and security and would clearly be in the national interest.

III. FINDINGS OF LAW AND FACT

The derogatory information at issue in the present proceeding involves the Individual's actions concerning a co-worker's real estate transaction. The record indicates that the co-worker and the co-worker's sister agreed to purchase a home as joint tenants in a distant state, where the co-worker's sister resides. The co-worker prepared a letter (the March 27, 2002 Letter), on official DOE letterhead, stating that the co-worker, who was at the time employed at a DOE facility located in one state, would be relocating to a DOE office in a second, geographically distant state in which her sister resides and would be retaining the salary and position that she held at the DOE facility in the first state. *Personnel Security Hearing, Case No. VSO-0561*, October 18, 2002 slip op. at 2. The co-worker signed the March 27, 2002 Letter using the Individual's name. The March 27, 2002 Letter prepared by the co-worker misrepresented the Individual as a "Human Resources Manager." It is undisputed that, at the time of the March 27, 2002 Letter's preparation and its submission to the loan officer, the co-worker had no plans to relocate to DOE's office in the second state. Nor was the Individual actually employed as a Human Resources Manager. Instead, the Individual was employed as a mail room clerk in the co-worker's office.

The co-worker admitted that she had asked the Individual to represent herself as a Human Resources Manager when a mortgage company employee called to verify the co-worker's employment. *Personnel Security Hearing, Case No. VSO-0561*, October 18, 2002 slip op. at 3. The Individual complied with the co-worker's request. When an employee of the mortgage company called the Individual in an attempt to verify the co-worker's employment, the Individual answered the phone in a manner indicating that she was a Human Resources Manager and then accurately verified the co-worker's employment. Tr. at 5. As the Notification Letter correctly notes, the Individual's intentional misrepresentation to the mortgage company employee raises a serious and significant security concern under 10 C.F.R. Part 710.8(l). However, I do not find all of the factual allegations in the Notification Letter to be supported by the evidence.

I find that the Notification Letter's allegation that the Individual gave her co-worker permission to use the Individual's name in the March 27, 2002 Letter is not supported in the record. The Notification Letter indicates that during her April 8, 2002 PSI, the Individual admitted that she had given her co-worker permission to use her name on the March 27, 2002 Letter. However, the transcript of the Individual's April 8, 2002 PSI does not sufficiently support this conclusion. During this PSI, the Individual had speculated that the co-worker had assumed that she had permission to use the Individual's identity. Transcript of the Individual's April 8, 2002 PSI at 8. But the Individual did not specifically indicate that she had provided her consent before the co-worker had submitted the March 27, 2002 Letter to the loan officer. 1/

1/ The co-worker had initially claimed that she had signed the Individual's name to the March 27, 2002 Letter with the Individual's permission. *Personnel Security Hearing, Case No. VSO-0561*, October 18, 2002 slip op. at 5. However, under questioning from the Hearing Officer at the Individual's hearing, the co-worker's story changed: the co-worker admitted that she had not obtained the Individual's prior consent to use the Individual's signature. Tr. at 23-24. The Individual also testified that she did not know that the co-worker was going to use the Individual's name in the March 27, 2002 Letter. *Id.* at 28.

During the April 8, 2002 PSI, the Individual did note that the co-worker had provided her with a copy of the March 27, 2002 Letter, apparently after it had already been provided to the loan officer. Transcript of the Individual's April 8, 2002 PSI at 5, 8-11. Moreover, the Individual admitted she became aware that her co-worker had used her identity to deceive the loan officer. Transcript of the Individual's April 8, 2002 PSI at 8-9. There is no evidence in the record that the Individual took any actions to alert DOE officials, the loan officer or any other authority that the co-worker was making deliberate and unauthorized misrepresentations on DOE letterhead. The Individual's provision of false information during her phone conversation with the mortgage company employee and her failure to act upon learning that her name and signature had been misused made her an active participant in her co-worker's scheme to obtain a loan worth tens of thousands of dollars under false pretenses. The Individual's participation in those deceptive and dishonest acts raises serious security concerns under 10 C.F.R. § 710.8(l).

While it is clear that the Individual's participation in these deceptive and dishonest acts was motivated by a desire to assist a friend rather than for personal gain, her false portrayal of a human resources manager during the phone conversation with the mortgage company employee and her failure to take action when she knew her name and forged signature had been used in a deceptive manner raise doubts about her ability to safeguard classified information and special nuclear materials. ^{2/} Her willingness to misrepresent herself as a "human resources manager" exhibited a willingness to deceive and a lack of judgment. Similarly, her failure to act when she learned that her name and signature had been misused exhibited a lack of judgment and a disrespect for the law. Accordingly, I find that derogatory information discussed above remains unresolved.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not presented evidence that warrants restoration of her access authorization. Since the Individual has not resolved the DOE's allegations under Criterion L, 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,

^{2/} A motivation to assist a friend or family member does not provide sufficient mitigation for loan fraud to warrant restoration of a DOE security clearance. *See Personnel Security Hearing, Case No. VSO-0001*, 24 DOE ¶ 82,751 (1994), *affirmed* (OSA, March 7, 1995).

the Individual's access authorization should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: October 30, 2002