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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: December 7, 2011) Case No.: PSH-11-0030
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____________________________________)

Issued: March 22, 2012

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXX (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 DOE should not grant the individual access authorization at this time.[2]

I. BACKGROUND

The individual is an employee of a DOE contractor and an applicant for an access authorization. On a Questionnaire for National Security Positions (QNSP), the individual disclosed that he had been charged with sexual penetration of a minor in 2003 and possession of marijuana in 1997. Exhibit 9. A Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on April 6, 2011. Exhibit 10. After the PSI, the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 4. Based on this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this

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[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.

[2] Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm.

determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. 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 concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the hearing officer. The DOE introduced eleven exhibits into the record of this proceeding. The individual introduced three exhibits, and presented the testimony of five witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites Section 1072 of the National Defense Authorization Act for Fiscal Year 2008, otherwise known as the Bond Amendment, as well as paragraphs (f), (h), (k), 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. Exhibit 1. I address below the validity of the allegations set forth in the Notification Letter in support of the cited criteria.

A. Criteria Set Forth at 10 C.F.R. § 710.8

1. Criterion (f)

Under criterion (f),[3] the Notification Letter alleges that the individual stated, in the QNSP and PSI referenced above, that he had not illegally used prescription drugs, that he had not tested positive for illegal drugs other than one time in 1997, and that he had never used inhalants. Exhibit 1 at 3-4. The LSO further cites, also under criterion (f), October 2009 medical records reflecting that the individual had illegally used oxycodone and had tested positive for opiates, and alleges that the individual admitted, during his interview with the DOE psychiatrist, to inhaling gas fumes. *Id.* However, I do not find all of these allegations to be valid.

While the individual did state in his QNSP and PSI that he had not illegally used prescription drugs, Exhibit 9 at 11; Exhibit 10 at 173, 336-67, the cited portions of the PSI do *not* contain statements by the individual that he had never tested positive for illegal drugs other than in 1997 or that he never used inhalants. Rather, the individual was asked, in the context of a discussion of his one-time positive workplace drug test for marijuana, whether he had used "marijuana on any other occasion at work," and then asked whether he had "ever tested positive other than this one time?" The individual responded no to the first question, and to the second responded, "this is the only time." Exhibit 10 at 151.[4] As for inhalants, the individual was asked questions in the PSI about his use of a

[3] Paragraph (f) defines as derogatory information that an individual has an has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to §710.20 through §710.31." 10 C.F.R. § 708.8(f).

[4] Though the cited portion of the PSI appears to have been discussing marijuana specifically, elsewhere in the

long list of substances, including the question, "Glues, paints, huffing?[,]" to which the individual answered "no." *Id.* at 171-74.

Given the ambiguous context of both questions, and the individual's actual responses, I find that these allegations in the Notification Letter, that the individual "stated that he has never used inhalants" and "stated that the only time he ever tested positive for illegal drugs was after a 1997 arrest," mischaracterize the statements of the individual in the PSI. Nonetheless, because the record does contain evidence, discussed in more detail below, that the individual illegally used prescription drugs, despite his statements to the contrary in his QNSP and PSI, there is ample basis for concern in this case under criterion (f).

2. Criterion (h)

Under criterion (h),[5] the Notification Letter cites the conclusion of the DOE psychiatrist that the individual met the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR) criteria for both Opioid Dependence and Mixed Personality Disorder. Exhibit 1 at 4. In her report, the DOE psychiatrist concluded that the individual had "a mental illness and/or condition, Opioid Dependence Coexisting with Mixed Personality Disorder, which causes or may cause a significant defect in judgment or reliability." Exhibit 4 at 20.

At the hearing, the DOE Counsel noted that the Notification Letter characterized the DOE psychiatrist's report as stating that each of the conditions at issue, Opioid Dependence and Mixed Personality Disorder, *independently* causes or may cause a significant defect in judgment or reliability, whereas the report actually only reaches this opinion with respect to the two conditions *coexisting*. The DOE Counsel stated that he was, therefore, "not necessarily comfortable that we've given adequate notification for [the individual] to be able to defend this when there is nothing in the file that supports it." Hearing Transcript (Tr.) at 193.

The DOE Counsel is correct that the Notification Letter does not accurately represent the fact that the DOE psychiatrist's report addresses the effect on judgment or reliability of the *coexistence* of two disorders. However, because the Notification Letter clearly references both of the diagnoses at issue, and the concern as to their effect on judgment and reliability, I find that the Notification Letter did provide adequate notice to the individual as to the concerns under criterion (h). Further, this notice was supplemented when the LSO provided the actual report of the DOE psychiatrist to the individual well in advance of the hearing in this matter.

3. Criterion (k)

Under criterion (k),[6] the Notification Letter cites diagnoses by both the DOE psychiatrist and the individual's treatment provider that the individual suffered from Opioid Dependence, evidence from

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PSI the individual was asked more generally about "being tested positively for drugs," and the individual responded "yes" to the question of whether the 1997 instance was "the only time you've ever tested positive." Exhibit 10 at 183.

[5] Paragraph (h) defines as derogatory information that an individual has an "illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 708.8(h).

[6] Paragraph (k) defines as derogatory information that an individual has "[t]rafficked in, sold, transferred,

the medical records of this provider that indicate he used oxycodone illegally, a 1997 arrest of the individual for possession of marijuana and drug paraphernalia, a 1983 arrest for possession of a controlled substance, his admitted use of marijuana three to four times from 1973 to 1997, and his admission that he inhaled gas fumes on one occasion. Exhibit 1 at 5.

Though most of these allegations are based on information supplied by the individual, and therefore are not in dispute, the Notification Letter alleges that the individual "acknowledged that he was unlawfully acquiring and using" oxycodone, and that he "admitted . . . his unlawful use . . . ." *Id.* These allegations do not accurately reflect the record in this case. In fact, in the cited portion of the PSI, the individual explicitly claimed that he "wasn't illegally" using prescription drugs. Exhibit 10 at 334. Nonetheless, as is discussed in more detail below, there is evidence that the individual, despite his protestations to the contrary, did use oxycodone illegally. This evidence, along with the allegations admitted by the individual, clearly raise concerns under criterion (k).

4. Criterion (l)

Under criterion (l),[7] the Notification Letter cites the arrest and conviction in 2004 of the individual for criminal sexual penetration of a minor, his admission that he engaged in sexual activity eleven times with a girl that he knew was between 13 and 14 years of age, a February 2009 arrest for speeding and failure to pay a citation, and the 1997 and 1983 drug arrests discussed above under criterion (k). These events are not in dispute.

The Notification Letter also cites to portions of the DOE psychiatrist's report and the PSI in support of an allegation that the individual admitted that he knew that his sexual activity with a minor was "illegal." Exhibit 1 at 6. There is, however, no such admission in the cited portions of the record, although elsewhere in the PSI, the individual answered in the affirmative when asked whether he knew that he could have "gone to prison" for his actions. Exhibit 10 at 137. In addition, the individual clearly admitted that he understood his behavior was "wrong." *See, e.g.* Exhibit 4 at 7, 9; Exhibit 10 at 137. In any event, given the allegations in the Notification Letter that are undisputed and supported by the evidence in the record, there is ample basis for concern under criterion (l).

B. The Bond Amendment

As a basis for the applicability of the Bond Amendment, the LSO cited the report of the DOE psychiatrist, specifically her conclusion that the individual met that DSM-IV-TR criteria for Opioid Dependence. The Bond Amendment provides that "the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 802(1) of title 21)." 50 U.S.C. § 435c(b) (2009). Section 802(1) of title 21 defines "addict" as "any individual who habitually uses any narcotic drug so as to endanger

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possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 708.8(k).

[7] Paragraph (l) defines as derogatory information that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 708.8(l).

the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction." 21 U.S.C. § 802 (2010).

In this regard, the DOE psychiatrist specifically found in her report that the individual took oxycodone "in larger amounts or over a longer period of time than was intended" and that there was "a persistent desire or unsuccessful efforts to cut or control substance use," two of the DSM-IV-TR criteria for substance dependence (in addition to two other criteria for this disorder the DOE psychiatrist found were met). Exhibit 4 at 16-17. Because these conclusions would support a finding that the individual had "lost the power of self-control with reference to his addiction," the term used in the statutory definition, I find that the DOE psychiatrist's diagnosis of Opioid Dependence raises clear concerns that the individual is an "addict," as that term is used in the Bond Amendment.[8]

C. The Security Concerns

As discussed above, despite some questions as to the validity of certain of the allegations in the Notification Letter, the valid allegations, on the whole, adequately justify the DOE's invocation of the Bond Amendment and criteria (f), (h), (k), and (l), and raise significant security concerns.

Failure to provide truthful and candid answers during the security clearance process, of concern under criterion (f), demonstrates questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information,* The White House (December 19, 2005) (*Adjudicative Guidelines*), Guideline E.

Illegal use of a prescription drug, at issue here under criterion (k), and addiction to a narcotic drug, of concern under the Bond Amendment, can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Id.* at Guideline H. Further, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness, in this case both opioid dependence and mixed personality disorder being of concern under criterion (h). *Id.* at Guideline I.

Under criterion (l), sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.* at Guideline D. Moreover, *any* criminal activity creates doubt about a person's judgment, reliability and trustworthiness, as it calls into question a person's ability or willingness to comply with laws, rules and regulations. *Id.* at Guideline J.

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[8] Though the DOE Counsel questioned whether the Bond Amendment would apply to an individual addicted to a legally prescribed drug, Tr. at 220-21, I note that the relevant statutory definition of "addict" makes no distinction between the use of legal and illegal drugs, but rather uses the term "any narcotic drug," a category that would include an opioid drug such as oxycodone.

III. REGULATORY STANDARDS

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 relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual 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). 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. ANALYSIS

A. Concerns Relating to False Statements

As discussed above, I have found that certain of the allegations in the Notification Letter regarding statements made by the individual in his April 2011 PSI do not accurately characterize those statements. Nonetheless, I found that the individual's *actual* statements do raise legitimate concerns under criterion (f), and I consider below whether those concerns have been resolved.

First, as to the individual's denial of abusing glues, paints, or "huffing," I find that any concern raised by this denial is essentially resolved, as I do not believe it is reasonable to expect the individual to have known that "huffing" would necessarily include the inhaling of gas fumes, something that the individual admits to having done on one occasion. Moreover, given that the individual freely admitted to this one-time incident during a psychological assessment performed in 2004, Exhibit 6 at 7, the individual had little, if any, motivation to attempt to conceal the incident during his PSI. I therefore find it very unlikely that the individual's response to this question was a *deliberate* misrepresentation, falsification, or omission. 10 C.F.R. § 708.8(f) (characterizing as derogatory information that an individual "*[d]eliberately* misrepresented, falsified, or omitted" information) (emphasis added).

As for the individual's statements in his PSI regarding his 1997 positive test for marijuana, the concern expressed by the LSO in this case stems from the individual's alleged characterization of this as "the only time he ever tested positive for illegal drugs . . . ." Exhibit 1 at 4. This concern is partially resolved by the less than clear questioning in the cited portions of the PSI, as discussed

above. More important, in my opinion, is the context in which the individual tested positive for opiates in October 2009. First, this positive test result is contained in medical records of the provider from which the individual sought treatment for his opioid addiction. Exhibit 7 at 31. As such, the test was clearly not a stand-alone drug screening such as the kind typically used in the context of employment or law enforcement. Second, there is no evidence that the individual was ever advised of the positive test result, only that the result appears in his treatment records. Finally, the individual has provided medical records dated September 25, 2009, showing that he was being legally prescribed oxycodone at that time. Exhibit 2 at 5. Thus, while there is evidence, discussed below, that the individual illegally used prescription drugs, there is no basis to determine whether this particular test result was due to legal or illegal use. I therefore find that any concern raised by the individual's statements regarding his positive drug tests has been resolved.

However, of much greater concern, in my opinion, are the individual's statements in his QNSP and PSI that he had not illegally used prescription drugs. Exhibit 9 at 11; Exhibit 10 at 173, 336-67. These statements are seriously undermined by contemporaneous records of the clinic from which he sought treatment in October 2009. Specifically, the earliest record from the clinic, dated October 27, 2009, includes the following notes: "'I need help.' Hooked on oxycodone. . . . Addiction grew from Lortab to OxyContin [brand name for extended-release oxycodone tablets]. . . . Taking as much as 180 mg/d. Spending $500/wk." Exhibit 7 at 32. This record also contains a reference to the murder of the individual's son in 2000, and states, "friend came over and told him this pill will make you feel good." *Id.*

This same record contains the notation "Used 2 x 20 mg OxyContin," which corresponds to a dosage he had most recently been legally prescribed, as indicated in the September 25, 2009, medical record referenced above. Exhibit 2 at 5. Earlier medical records provided by the individual, from August 2009, include a "plan of care" to increase his OxyContin dosage to 30 milligrams, twice a day, plus Percocet (a medication containing acetaminophen and up to 10 mg of oxycodone) up to 4 times a day. *Id.* at 10.

Thus, the October 27, 2009, treatment record indicates that the individual was taking significantly more (as much as 180 milligrams per day) than the maximum daily amount of oxycodone ever prescribed to him. Moreover, it reports that the individual was spending an amount ($500 per week) that suggests he was purchasing the drug illicitly. The individual, given an opportunity at the hearing to explain these records, provided testimony that I found simply not credible.

First, the individual acknowledged that there were days during a three-week period when he would take up to 180 milligrams of oxycodone per day, an amount he acknowledged exceeded his prescribed dosage. Tr. at 55, 110. However, he denied that he ever illegally purchased the drug. *Id.* at 56, 105. When I asked the individual whether he told his treatment provider that he was spending $500 per week on oxycodone, the individual responded that

> [w]hat I said to them was, when I went in, that I'm looking at spending that much money if I continue overmedicating myself. That's how much –
>
> > Q. And how do you know?
> >
> > A. Well, that's how much --

Q. How would you know how much it would cost you?

A. I didn't know what it would cost me. That would be my paycheck. If I spent my paycheck, then, you know, that's how much I make.

Id. at 64-65. This testimony, on its face, strains credulity. In addition, I asked the individual about a notation in a September 2010 record of his treatment provider that he "was losing money b/c of drug habit." Exhibit 7 at 15. The individual responded that he did not "remember ever mentioning that." Tr. at 65. Similarly, regarding the reference in the medical records to a friend giving him a pill, the individual testified that he did not "remember. That was so long ago. I mean I have no explanation for that." *Id.* at 122-23.

What is left, then, in the record are unexplained discrepancies that leave me with serious doubts that the individual has been honest in his continuing denials of purchasing and/or using drugs illegally. Given this evidence, despite testimony at the hearing describing him as honest in other respects, *e.g., id.* at 17-18, 70, 75, 77, 84-85, I cannot find that the concerns raised in the case under criterion (f) have been resolved.

B. Concerns Stemming from the Individual's Opioid Dependence

Cited in the Notification Letter as a concern under the Bond Amendment, as well as criteria (h) and (k), is the DOE psychiatrist's finding that the individual meets the DSM-IV-TR diagnosis for Opioid Dependence. The individual has offered no independent expert opinion or other evidence that would contradict this diagnosis, and I find it to be well supported by the record. Indeed, the medical records from the treatment provider used by the individual contain the same diagnosis. *See, e.g.* Exhibit 7 at 8, Exhibit A at 20.

The individual, to his credit, sought treatment for this condition, and in October 2009 was prescribed Suboxone, Exhibit 7 at 31, described by the DOE psychiatrist as "something similar to methadone . . . , which allows him to deal with the absence of OxyContin." Tr. at 166. Further, the individual has submitted a letter from his treatment provider stating that he "has done very well on our Suboxone program, providing negative urine screens and following up with regular counseling, a requirement for our program." Exhibit 2 at 4. The record indicates that the individual was initially prescribed 8 milligrams of Suboxone, twice a day, Exhibit 7 at 31, and according to the most recent medical records submitted, dated December14, 2011, that dosage had been reduced to 8 milligrams, once a day. Exhibit A at 20. The individual testified that he intended to eventually discontinue Suboxone completely. Tr. at 217.

This evidence certainly demonstrates progress in the right direction. However, when asked to opine on the risk that the individual would relapse into misuse of OxyContin, the DOE psychiatrist testified that she had reviewed the literature on Suboxone therapy and "the bottom line is the studies show that Suboxone works well for prescription opiate users, . . . but discontinuation of Suboxone use causes relapse rates to skyrocket. . . . Up to 95 percent of people who stop Suboxone successfully, after they have been successfully treated, relapse pretty quickly within the 12 months." *Id.* at 164-65. In the case of the individual, the DOE psychiatrist testified that there was a moderate risk going forward that he would return to the use of opiates. *Id.* at 209-10.

Considering the above, I cannot find that the risk of relapse for the individual is low enough at this time such that the concerns raised by the diagnosis of Opioid Dependence, under criteria (h) and (k), and under the Bond Amendment, have been resolved. In fact, it would appear that, from the point of view of the national security, the risk of relapse in this case will continue to be too high until the individual has successfully completed his Suboxone treatment and avoided the significant risk of relapse thereafter. *See id.* at 171 (testimony of DOE psychiatrist that she "would like to see the completion of the program and then wait for even a year after and see how he does. But at this point in time . . . , I couldn't say that his risk of relapse is low."); *cf. Personnel Security Hearing*, Case No. TSO-1020 (2011) (individual who successfully rehabilitated himself from his addiction to opioids no longer an "addict" within the meaning of the Bond Amendment).[9]

C. Concerns Raised by Criminal Conduct and Diagnosis of Mixed Personality Disorder

Of the criminal conduct cited under criterion (l), none of which is in dispute, the most concerning in my opinion is the individual's charge and conviction in 2004 for criminal sexual penetration of a minor. This is because the admitted behavior, sexual intercourse with a girl the individual knew to be between 13 and 14 years old, demonstrates not only a willingness to disregard the law, but also a stunning lack of judgment. By contrast, the most recent conduct, speeding and failure to pay a citation, is far less serious, while the other conduct, marijuana possession charges in 1983 and 1997, is both less serious and more remote in time.

Thus, even though the sexual criminal conduct occurred over eight years ago, the gravity of this behavior makes it more difficult to resolve the obvious concerns it raises. Moreover, the behavior appears to have been caused, at least in part, by an underlying personality disorder. As discussed below, given the opinion of the DOE psychiatrist that this disorder has not yet been sufficiently treated, I cannot find that the concerns raised by either the individual's criminal conduct or the diagnosis of a personality disorder have been resolved.

Prior to being sentenced for his 2004 conviction, the individual was referred by the court to a psychologist for a comprehensive sex offender evaluation, the report of which is in the record of this case. Exhibit 6. In his report, the psychologist concluded that the individual was at a "low to low-moderate risk of recidivism" and that his "assessment and risk prediction indicate that he is a good candidate for a probated sentence and that he will likely conform in the community to conditions of his probation." *Id.* at 16-17. The psychologist also diagnosed the individual with "mixed personality disorder," though noting his belief that the "condition is not likely to cause significant obstacles to his treatment or his conformity, and it simply needs to be noted as an underlying contributing factor to his offenses." *Id.* at 15.

The DOE psychiatrist, in her report, cited the prior diagnosis of mixed personality disorder, emphasizing the conclusion that it was an underlying contributing factor to the offense at issue,[10]

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[9] Aside from the issue of opioid dependence, the concern raised under criterion (k) would likely be resolved in this case, given the isolated nature of the individual's one-time inhalation of gas fumes and his limited use of marijuana, most recently in 1997. 10 C.F.R. § 710.7(c) ("frequency and recency of the conduct").

[10] At the hearing, the DOE Counsel stated that he did not "think that there is anything in [the Notification Letter] that sort of puts it on the table for him adequately to defend whether or not that aspect of his mental make-up was a contributing factor to the crime or not." Tr. at 194. Though the DOE Counsel is correct that the Notification Letter does not address any connection between the diagnosis of personality disorder and his criminal conduct, I do not find that the individual was deprived of adequate notice as a result. The Notification Letter clearly put the individual on notice that

and concurred with this diagnosis, specifically finding that the individual met DSM-IV-TR criteria for "Mixed Personality Disorder primarily with dependent and histrionic features, and with secondary narcissistic and antisocial features." Exhibit 4 at 18-19.

In her testimony, the DOE psychiatrist noted that, though the individual successfully completed probation, he reported in his interview with the DOE psychiatrist that he had become involved again with the victim of the crime, who by then was 21- or 22-years old. Tr. at 185, 213-14; Exhibit 4 at 8. The individual testified at the hearing that the woman had since moved in with him, but that the relationship subsequently ended and she moved out. Tr. at 116-18. The DOE psychiatrist characterized renewing this relationship as a "very recent relapse of poor judgment" and opined that the individual's mixed personality disorder was a factor in this behavior. Tr. at 214.

The psychiatrist testified that the individual could benefit from therapy, but found that the "medical records do not provide a description of convincing psychotherapeutic benefits that he has gathered . . . , even throughout this probation." *Id.* at 187. Describing the individual as being "pre-disposed to abnormal judgment and behavior," the DOE psychiatrist testified that the individual needed to recognize the "long-standing maladaptive personality traits . . . fueled by the grief [brought on by the murder of his son] that made him commit an egregious crime." *Id.* at 188.

Having been present for the entire hearing, the DOE psychiatrist found the individual's testimony to "inappropriately rationalize the causative factors in the major lapse of judgment in the past, ..." *Id.* at 205. She expressed hope that the individual would take her report to "a practitioner that is in a treatment relationship with him" and address his issues, "so that this person will not fall into some major lapse of judgment in the future again. Because I think he is treatable, but I don't think it's being
addressed, ..." *Id.* at 207. She concluded that, "with regards to the mixed personality disorder, unless it is addressed in therapy, professional therapy, I think it is actually still a moderate to high risk of relapse at this time." *Id.* at 214.

I found the testimony of the DOE psychiatrist to be persuasive and well supported, both as to the diagnosis of a personality disorder and as to the risk of a future major lapse of judgment. As noted by the psychiatrist, even if such a lapse would be outside of the area of security, the individual's "traits might play into doing something that could be embarrassing again. And then that, I think, speaks to the coercibility and the blackmail and all." *Id.* at 216. I therefore cannot find that the serious security concerns raised by the individual's criminal behavior, under criterion (l), and the diagnosis of Mixed Personality Disorder, under criterion (h), have been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns under the Bond Amendment and criteria (f), (h), (k), and (l) . Therefore, the individual has not demonstrated that granting him access authorization would not endanger the common defense

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both the diagnosis and specified criminal conduct were of concern to the DOE. In addition, the DOE psychiatrist's report, provided to the individual in advance of the hearing, cited the 2004 sex offender evaluation's finding that the individual's personality disorder was a contributing factor to his offense, and the DOE psychiatrist, in her conclusion, found "an underlying personality disorder that is yet to be addressed in treatment. This personality disorder has been assessed as a contributing factor to the individual's history of major impairment of judgment." Exhibit 4 at 18-19.

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.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: March 22, 2012