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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: February 4, 2013)
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) Case No.: PSH-13-0011
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_____)

Issued: May 20, 2013

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX XXXXXXXX (hereinafter referred to as "the Individual") to maintain a security clearance 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." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

I. BACKGROUND

On March 26, 2012, the Individual reported to a Local Security Office (LSO) that he had been arrested three days earlier and charged with "Sexual Misconduct or Attempt Involving a Child Under 15." Exhibit 8 at 1. The LSO conducted a Personnel Security Interview (PSI) of the Individual on April 11, 2012, and then referred him to a DOE Psychologist who diagnosed the Individual as suffering from Narcissistic Personality Disorder (NPD).

Unable to resolve the security concerns raised by the criminal charges, the conduct underlying these charges, and the NPD diagnosis, the LSO initiated administrative review proceedings by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l).

The Notification Letter 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 access authorization. The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on February 4, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his treating therapist (the Therapist), and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-13-0011 (hereinafter cited as “Tr.”). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11. The Individual submitted one exhibit, marked as Exhibit A.

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). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or 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.

III. FACTUAL BACKGROUND

In August 1999, local child protection authorities conducted an investigation into allegations that the Individual had digitally penetrated a five-year old girl's (Victim One) vagina and found “a probable cause finding of sexual abuse.” Exhibit 9 at 11, 38. During a September 13, 2007, Office of Personnel Management (OPM) interview, the OPM Interviewer asked the Individual about the incident involving Victim One. The Individual reported that Victim One's mother had reported the incident to child protection authorities. Exhibit 11 at 58. The Individual told the OPM interviewer that Victim One had been wearing a swim suit that was too small for her and that he had pulled the suit out from between her legs. *Id.* During an April 11, 2012, PSI, the Individual essentially repeated this description of the incident, but claimed that he was accused of “touching” Victim One, while failing to mention that he was accused of digitally penetrating her. Exhibit 10 at 67-68, 70. According to the Individual, the police questioned him about this incident, but he was never arrested or charged as a result of that incident. *Id.* at 70, 76-77. The Individual denied that he had sexually abused Victim One. *Id.* at 78-79.

On October 30, 2011, the Individual's 15-year old daughter (Victim Two) asked to speak with a counselor at her school. Exhibit 10 at 28. Victim Two told the school counselor that she was

afraid to return home, because her step-mother had recently moved out of the family home, leaving her living alone with her father (the Individual), and she was concerned that the Individual would sexually abuse her. The school counselor immediately reported Victim Two's concerns to the police and child protection authorities. Exhibit 9 at 8. Victim Two subsequently explained to the police why she was afraid of living with the Individual. Victim Two stated that, when she was in the sixth grade, her father made her take off all of her clothes and clean the kitchen naked. *Id.* Victim Two stated that when she finished cleaning the kitchen, she went to look for her father and found him undressed. *Id.* at 8, 23. Victim Two reported that her father had previously rubbed her back and high on the inside of her thighs over her clothes. She reported that she had informed the Individual that it made her uncomfortable on several occasions. *Id.* Victim Two stated that her father had asked "how does this feel" while rubbing her leg. *Id.* at 23. Victim Two reported that her father had been touching her daily since her step-mother moved out. *Id.* Victim Two reported that the Individual had invited her into his bed to cuddle. *Id.* Victim Two decided to report her concerns after an incident in which her father asked her to lock the family computer. When she arrived at the computer, she saw "father daughter sex" had been typed into the search engine. *Id.* Victim Two also reported that her father wanted her to talk to him about her "sexual feelings" which made her uncomfortable. *Id.* Victim Two reported that the Individual had asked her if she "felt wet down there." *Id.* at 23. Victim Two reported that she was "afraid" of her father. Exhibit 9 at 19.

The child protection authorities interviewed the Individual on October 31, 2011. The Individual admitted that he made Victim Two strip and clean the kitchen. Exhibit 9 at 20. He claimed that he had only required her to strip down to her underwear, however. *Id.* The Individual claimed that he had ordered Victim Two to strip and clean the kitchen because he did not know of any other way to motivate her, since spankings, time-outs, and groundings had not worked before. *Id.* The Individual claimed that he had rubbed Victim Two's leg in order to wake her for school. *Id.* The Individual admitted to visiting father daughter sex websites. *Id.*

On October 31, 2011, the child protection authorities issued a report stating they had: "determined by a preponderance of evidence that [Victim Two] was the victim of sexual abuse in the form of being exposed to sexual material, sexual grooming and unwanted inappropriate touching perpetrated by [the Individual]." Exhibit 9 at 27. Police and child protection authorities immediately removed Victim Two from the Individual's home and placed her in protective custody with a foster family. On March 23, 2012, the police arrested the Individual and charged him with "Sexual Misconduct or Attempt involving a Child Under 15."

On December 8, 2011, the Individual began counseling with the Therapist, a licensed clinical social worker. Exhibit 9 at 63. The Therapist initially diagnosed the Individual with Adjustment Disorder with Mixed Anxiety and Depression. *Id.* at 68.

On March 3, 2012, a psychologist retained by the child protection authorities (the Child Protection Psychologist) conducted a psychological evaluation of the Individual and administered a series of standardized psychological tests. On March 9, 2012, the Child Protection Psychologist issued a report in which he diagnosed the Individual with both Narcissistic Personality Disorder and Adjustment Disorder with Mixed Anxiety and Depressed Mood, Acute. Exhibit 9 at 94. The Child Protection Psychologist's report further opines that:

“[The Individual’s] exaggerated self-involvement and feelings of entitlement, poor impulse control, tendency to project blame onto others and avoid personal responsibility, suspiciousness and social detachment, emotional immaturity, poor interpersonal boundaries, rigidity, and poor social judgment are significant risk factors for sexual and other types of acting out.” *Id.*

On April 11, 2012, the LSO conducted a PSI of the Individual. The Individual claimed that “this whole thing has been blown completely out of proportion” and accused his daughter, Victim Two, of being dishonest. Exhibit 10 at 19, 22. The Individual suggested that Victim Two was lying because she had “psychological problems” and was “very manipulative.” *Id.* at 97-98. He further claimed that his daughter’s “story keeps changing.” *Id.* at 64. The Individual claimed that the child protection authorities had placed Victim Two in a foster home with her boyfriend. *Id.* at 45, 139.

The Individual stated that the police and child protection authorities had misinterpreted his statement that he had “typed father daughter sex talks” into the search engine as an admission that he had viewed father daughter sex pornography. Exhibit 10 at 42-43. The Individual claimed that he typed “father daughter sex talks” into an internet search engine because he was searching for advice on how to educate his daughter about sex. *Id.* The Individual claimed that he had been doing so for some time and that sometimes, when he was searching for educational websites, pornographic “father-daughter” websites would come up inadvertently. Exhibit 10 at 23. The Individual claimed that he was unaware that the father daughter sex search results were on the computer when he asked her to turn the computer off. *Id.* at 24.

During the PSI, the Individual provided an account of the touching incidents which differed from that which he had provided to the child protection officials and police. *Id.* at 25-26. For example, he told the child protection officials and the police that he had touched his daughter’s leg in order to wake her up to go to school in the morning, while during the PSI, the Individual stated that he had touched his daughter’s leg while watching television on the couch. *Id.* The Individual denied that he asked his daughter to come into the bedroom and cuddle. *Id.* at 31. He admitted that there were times when they sat on the couch and he would put his hand on Victim Two’s leg and she would complain that it was uncomfortable. *Id.* at 33. The Individual stated that he was just trying to be an affectionate father. *Id.* at 35.

As for his question to his daughter about being “wet down there,” he stated: “I said it's just like when I was a kid and I started to get a hard-on it freaked me out because nobody ever explained any of that to me, so I was trying to keep that situation from happening. So I told her, I said, your body is going through changes and things will happen. And I kinda described some of them and that's what I did.” *Id.* at 146.

The Individual admitted that the Child Protection Psychologist diagnosed him with Narcissistic Personality Disorder (NPD). *Id.* at 111. He strongly disagreed with that diagnosis, however. *Id.* at 111-113. During the PSI, the Individual claimed that he shared the Child Protection Psychologist’s report with the Therapist and discussed the NPD diagnosis with the Therapist. The Individual stated that the Therapist “completely disagrees with the results.”¹ *Id.* at 114-116.

¹ At the hearing, the Therapist denied that he told the Individual that the Individual did not suffer from NPD. Tr. at 41.

On May 15, 2012, the DOE Psychologist conducted a psychological evaluation of the Individual. On May 29, 2012, the DOE Psychologist issued a report in which she opined that the Individual met the criteria for NPD set forth in the Diagnostic and Statistical Manual- Fourth Edition (Text Revision) (DSM-IV-TR), having met six of the nine diagnostic criteria for the disorder (only five criteria need to be met in order for the diagnosis to apply). Exhibit 6 at 11-12. Noting past issues with the Individual's employment and finances, the DOE Psychologist opined that the Individual has "difficulties setting limits on his self-gratification" which "extend into areas other than sex." *Id.* at 9. The DOE Psychologist further opined that NPD is an illness or mental condition which causes, or could cause, a significant defect in the Individual's judgment and reliability. *Id.* at 12.

On January 14, 2013, the criminal charges against the Individual were dismissed without prejudice. Exhibit A at 1. However, Victim Two remains in protective custody, and the Individual is still prohibited from contacting her without official supervision. Tr. at 61-62. The Individual testified at the hearing that he has recently been allowed to have unsupervised visits with his other three minor daughters. *Id.* at 63.

IV. DEROGATORY INFORMATION AND SECURITY CONCERNS

The record shows that the Individual was criminally charged with Sexual Misconduct or Attempt involving a Child under 15. Such serious criminal conduct raises security concerns under Criterion L. Moreover, the evidence gathered during the LSO's investigation of these criminal charges constitutes derogatory information which raises serious security concerns under Criterion L. "Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) Guideline J at ¶ 30. "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guideline E at ¶ 15.

The record shows that two psychologists have diagnosed the Individual with Narcissistic Personality Disorder. An opinion by a duly qualified mental health professional that the individual has "a condition . . . that may impair judgment, reliability, or trustworthiness" may raise a security concern and be disqualifying. Adjudicative Guideline I at ¶ 28.

"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." Adjudicative Guideline D at ¶ 12.

V. ANALYSIS

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, an individual must produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d); *see also Department of Navy v. Egan*, 484 U.S. 518, 532 (1988) (*Egan*) (security clearances will be granted only when “clearly consistent with the national interest”); *Personnel Security Hearing, Case No. PSH-12-0100* (2012), and cases cited therein.² The regulations and the case law further instruct me to resolve any doubts concerning the Individual’s eligibility for access authorization in favor of the national security. *Egan*, 484 U.S., at 532 (“the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials”); 10 C.F.R. § 710.7(a). Accordingly, unlike a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt, the standard in this proceeding places the onus on the individual because it is designed to protect national security interests. An individual, however, is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h).

After careful consideration of the record, I find that the Individual has not sufficiently mitigated the security concerns raised under Criteria H and L.

Criterion L

At the hearing, the Individual testified, and submitted Exhibit A in corroboration, that the criminal charge of Sexual Misconduct or Attempt involving a Child under 15 was dismissed by the presiding judge. Tr. at 75. The Individual argues that this dismissal proves that he was unjustly accused and resolves the security concerns raised by his arrest for Sexual Misconduct or Attempt involving a Child under 15. However, this contention is without merit. Derogatory information indicating that an individual has engaged in illegal activity is not necessarily resolved by a favorable adjudication in a criminal proceeding. Adjudicative Guidelines at ¶ 31(c); *Personnel Security Hearing, Case No., PSH-12-0130* (2012); *Personnel Security Hearing, Case No. PSH-12-0097* (2012). In the criminal proceeding, the burden of proof was on the government to show beyond a reasonable doubt that the Individual had committed Sexual Misconduct or Attempt involving a Child under 15, while in the present proceeding the onus is on the Individual to adequately mitigate the security concerns associated with the conduct which led to the criminal charges. The accounts of the incidents involving Victim One and Victim Two, as well as the corroborative evidence gathered by the police and child protective authorities, constitute sufficient unresolved derogatory information to raise serious security concerns about the Individual. This hearing was an opportunity for the Individual to provide evidence to resolve or mitigate the lingering doubts raised by this derogatory information. After considering the evidence in the record, including the testimony of the Individual and his

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

Therapist, I find that the Individual has not resolved or mitigated the lingering doubts raised by this derogatory information concerning the alleged Sexual Misconduct or Attempt involving a Child under 15.

The Individual denies that any of his conduct was motivated by a desire to seek sexual gratification and suggests that each of the incidents described above have innocent explanations. At the hearing, the Individual testified that he had ordered Victim Two to clean the kitchen floor in her underwear because she had previously taken four hours to clean the kitchen floor.³ He testified that he believed the embarrassment would cause her to work faster. Tr. at 65-66. The Individual testified that he did not realize how that incident could be seen as sexual until the authorities brought charges against him. *Id.* at 69. The Individual testified that rubbing his daughter's leg was merely meant as an expression of parental affection, rather than a sexual gesture. *Id.* at 69-70. He admitted that Victim Two would complain that this leg rubbing made her uncomfortable, and that he would unconsciously repeat this activity when she would sit next to him on the couch. *Id.* The Individual testified that Victim Two would only sit next to him when his wife (her step-mother) was not present. *Id.* at 71. The Individual admitted that he would ask Victim Two how it felt when he was rubbing her leg, but claimed he was only asking in order to be sure he was not making her uncomfortable. *Id.* at 72. The Individual testified that he asked Victim Two about "being wet down there" as a parent attempting to help her understand the changes her body was undergoing during adolescence. *Id.* at 72-74. During his testimony at the hearing, the Individual admitted he had touched Victim One's genitalia, but argued that it was not for sexual gratification. *Id.* at 77. The Individual claimed he was trying to fix Victim One's swim suit. *Id.* at 78. When questioned about the allegation that he had digitally penetrated Victim One, the Individual testified "I had never seen a report that says I penetrated her, because I never did do that." *Id.* at 88.

After carefully considering the Individual's demeanor, I did not find the Individual to be a credible witness. His accounts of the incidents have changed over time, contradict one another, and are hard to believe. The sheer number of incidents and accusations give weight to the inference that the Individual was grooming Victim Two for incestuous sexual activity as suggested by the child protection authorities. Exhibit 9 at 27. Moreover, even if I were to believe the Individual's assertion that his conduct was not sexually motivated, it still brings the soundness of his judgment into question.

Accordingly, I find that the Individual has not resolved the security concerns raised under Criterion L.

Criterion H

I find that the Individual has not mitigated the security concerns raised under Criterion H by his NPD diagnosis. The Individual does not meaningfully dispute the DOE Psychologist's conclusion that he suffers from NPD. In fact, the record shows that three mental health

³ During the PSI, the Individual claimed that it had taken Victim Two 10 hours to clean the kitchen floor. Exhibit 10 at 14.

professionals (the Child Protection Psychologist, the DOE Psychologist, and the Therapist) have found that the Individual is properly diagnosed with NPD. Exhibit 9 at 94; Exhibit 6 at 11-12; Tr. at 17-19.

The DOE Psychologist found that the Individual's NPD is an illness or mental condition which causes, or could cause, a significant defect in the Individual's judgment and reliability. Exhibit 6 at 12. The Individual's Therapist, during his testimony at the hearing, contended that the effect of the NPD on the Individual's judgment and reliability still needs to "be determined over time." Tr. at 18. The Therapist testified that the Individual's poor judgment tends to be limited to his parenting, "in other aspects of his life, he is almost scrupulous with maintaining legal rules." *Id.* at 30-32. I found the DOE Psychologist's testimony on this issue to be more credible, since she correctly noted that the Individual has exhibited poor judgment in his financial affairs and in work situations. Moreover, the DOE Psychologist's testimony that the Individual's NPD causes a significant defect in his judgment and reliability is supported by the Child Protection Psychologist's report, as discussed above in Section III of this decision.

The evidence before me does not show that the Individual is reformed or rehabilitated from his NPD. The Therapist testified that he and the Individual have met for 34 one-hour sessions since December 2011. Tr. at 27-28. He testified that the Individual was about three-quarters of the way through his course of treatment. *Id.* at 29. The Therapist testified that the Individual's life "still is not stabilized." *Id.* The Therapist testified that the Individual was responding to treatment "very well" and described the Individual's prognosis as "good." *Id.* at 33, 40.

The Individual testified that he sought treatment because it was required by the child protection authorities. Tr. at 48. The Individual testified that he was considering finding a different counselor or finding a therapy group, because he was not sure if he was getting the results he should have been or if he was getting the right type of treatment. *Id.* at 49-50, 53-55.

At the hearing, the DOE Psychologist observed the testimony of each of the other witnesses before she, (the DOE Psychologist) testified. The DOE Psychologist testified that she continued to be of the opinion that the Individual met the criteria for NPD. Tr. at 91. The DOE Psychologist testified that the Individual's condition is treatable, but the counseling he has been receiving is not addressing the issues of the primary diagnosis, which is NPD. *Id.* at 92. The DOE Psychologist testified that the treatment has not been sufficiently frequent. *Id.* She testified that NPD is an enduring pattern and pervasive pattern of behavior, which requires intensive treatment on a weekly basis, for at least a two year duration. *Id.* at 92, 94-95. The DOE Psychologist testified that the Therapist had not been using any of the three approaches to NPD considered to be effective by the psychology profession, but instead, seemed to be targeted at addressing the Individual's adjustment disorder. *Id.* at 92-93. The DOE Psychologist testified that the NPD continues to cause a defect in the Individual's judgment and reliability. At this point, the DOE Psychologist testified, the Individual's prognosis is poor because of the lack of appropriate treatment. *Id.* at 93-94.

I found the DOE Psychologist's testimony to be highly credible. Based on the evidence before me, I find that the Individual has not shown any rehabilitation or reformation from his NPD because he has not been adequately treated for that condition. Accordingly, I find that the

Criterion H allegations before me remain unresolved.

V. CONCLUSION

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criteria H and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: May 20, 2013