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United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing )

Filing Date: June 5, 2013 )

Case No.: PSH-13-0072

Issued: November 6, 2013

**Decision and Order**

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by the Department of Energy (DOE), and was granted a security clearance in connection with that employment. In 2012, the local security office (LSO) received information about inappropriate workplace behavior and the misuse of government-owned computers and telephones by the individual. Because this information raised security concerns, the LSO summoned the individual for interviews with a personnel security specialist on September 5 and September 10, 2012. Because these Personnel Security Interviews (PSIs) did not resolve the LSO’s concerns, the individual was referred to a local psychiatrist (hereinafter referred to as “the DOE psychiatrist) for an agency-sponsored evaluation. The DOE psychiatrist

<sup>1</sup> 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 also be referred to in this Decision as a security clearance.

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

prepared a report based on that evaluation and submitted the report to the LSO. After reviewing this report and the other information in the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. 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 access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced nine exhibits into the record of this proceeding, and presented the testimony of the DOE psychiatrist at the hearing. The individual introduced one exhibit and presented the testimony of four witnesses, in addition to testifying himself.

## **II. DEROGATORY INFORMATION AND THE DOE'S SECURITY CONCERNS**

### **A. Derogatory Information**

The following facts are undisputed. The individual was granted a DOE security clearance in 1993. In the summer of 2011, the individual engaged in an inappropriate conversation of a sexual nature with a male co-worker at his workplace. A female co-worker overheard the conversation, and reported the incident. The individual received a Memorandum of Counseling, which stated that the inappropriate conversation had created a hostile work environment, and warned of further disciplinary measures for future incidents of a similar nature. The individual was required to undergo sexual harassment training.

During an exit interview in 2012, another female co-worker complained that she had overheard the individual engaging in numerous telephone conversations of an inappropriate, sexual nature, using government-owned equipment during working hours. This allegation resulted in an official inquiry into the matter, and a Report of Inquiry (ROI) was issued in June 2012. The ROI (DOE Exhibit (DOE Ex.) 6) concludes that, between August 2011 and April 2012, the individual used a government telephone during working hours to participate in approximately 75 sexually-oriented telephone calls. These calls were both incoming and outgoing, and were made to coordinate visits to strip clubs and private strip shows at the residences of the individual and of a co-worker.

As part of this inquiry, the hard drive from the individual's government-issued computer was retrieved and transferred to the DOE's Cyber-Forensic Laboratory for analysis. The technicians found two files containing pictures of women on the hard drive. One file contained 24 pictures of women, eighteen of whom were fully clothed, and six of whom were dressed in bikinis, bras and panties, or lingerie. The second file contained 63 images of women. In one of them, the woman was partially nude, and in all of the others, the women were wearing only bikinis, lingerie, bras and panties, or what the ROI termed "provocative clothing." According to the ROI, none of the 87 images were pornographic, but the women whose pictures were in the second file were in "sexually suggestive" poses.

On September 10, 2012, the individual was issued a written reprimand for inappropriate behavior while on duty and while using government resources. As previously indicated, the LSO learned of these events, and conducted two PSIs with the individual in September 2012. During these PSIs, the individual admitted to retaining the services of prostitutes on approximately 30 occasions between 1982 and 2011. He further stated during these PSIs that he is a “sexual addict,” and that “when it comes to sexual stuff, I have poor judgement.” See September 5, 2012, PSI at 68; September 10, 2012 PSI at 81.

In January 2013, the individual was evaluated by the DOE psychiatrist. In the report that the DOE psychiatrist prepared for the LSO, he noted that sex addiction or hyper-sexuality are not officially recognized as mental or emotional disorders in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR Plus). However, he concluded that the individual has shown significant defects in judgment regarding sexual issues, the most salient example of which is his having sex with prostitutes, an illegal activity, while holding a DOE security clearance. DOE Exhibit (DOE Ex.) 3 at 3.

## **B. The Notification Letter and the DOE’s Security Concerns**

The LSO determined that this derogatory information created a substantial doubt as to the individual’s eligibility to hold a clearance. In its Notification Letter to the individual, the LSO specifically cited paragraphs (h) 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.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual’s judgment or reliability. 10 C.F.R. § 710.8(h). As support for this criterion, the Letter cites the DOE psychiatrist’s conclusions, and the individual’s statements that he is a “sex addict,” who has exercised poor judgment regarding sexual matters.

Criterion (l) defines as derogatory information indicating 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 which may cause him to act contrary to the best interests of national security. Such circumstances include, but are not limited to, instances of illegal activity. As support for this criterion, the Letter refers to the individual’s violations of rules and regulations regarding workplace conduct and the misuse of government resources, and his illegal activities with prostitutes.

The circumstances described above adequately justify the DOE’s invocation of criteria (h) and (l), and raise significant security concerns. As an initial matter, a duly qualified mental health professional retained by the U.S. Government has determined that the individual has an emotional, mental or personality condition that can impair his judgment. Moreover, conduct involving questionable judgment or unwillingness to comply with rules and regulations, including those having to do with the proper usage of government-owned information technology systems, can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Finally, criminal activity also creates doubt about a

person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines I, E, M and J.*

### **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 or unfavorable, that has a bearing on the question of whether granting or restoring 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). *See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by OSA, 1996), and cases cited therein.* 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. FINDINGS OF FACT AND ANALYSIS**

The individual does not contest the allegations set forth in the Notification Letter. Instead, at the hearing, he attempted to demonstrate that he no longer suffers from an illness or mental condition that adversely affects his judgment or reliability, and that he can be relied upon to follow all applicable laws, rules and regulations in the future. Based on the testimony of the witnesses and the record in this matter as a whole, I find that the individual has adequately addressed the DOE's security concerns under criterion (h) regarding his mental and emotional condition, but that valid concerns remain under criterion (l). My reasons for these findings are set forth below.

#### **A. Criterion (h)**

The DOE psychiatrist did not diagnose the individual as suffering from a sexual addiction in his report. However, after hearing the individual's testimony and that of the other witnesses at the hearing, the DOE psychiatrist opined that he did, in fact, suffer from that condition. Hearing

Transcript (Tr.) at 183. He said that the diagnostic criteria are the same as those used in diagnosing a substance use disorder, and that “a central diagnostic criteria (*sic*) is repeated use despite adverse consequences, which speaks to the impaired control.” Tr. at 185. Applying this standard to the individual’s case, the DOE psychiatrist cited his repeated workplace telephone conversations of a sexual nature after having received a Memorandum of Counseling for engaging in an earlier inappropriate sexual conversation while at work, Tr. at 191, and his repeated trysts with prostitutes despite the risks to his security clearance, his employment, and his marriage, as reasons for his diagnosis. Tr. at 203. The DOE psychiatrist also cited the individual’s testimony that he had begun attending Sex Addicts Anonymous (SAA) meetings as a factor in his diagnosis. Tr. at 195. Regarding the questions of rehabilitation or reformation, the DOE psychiatrist found the individual’s SAA participation and the period of approximately two years since his last admitted incident of sex with a prostitute to be positive factors. However, the DOE psychiatrist “kind of arbitrarily” set a standard of three years without a sex-related violation of the law or of his wife’s trust as being adequate to demonstrate rehabilitation or reformation. Tr. at 188. Accordingly, he concluded that the individual had not met this standard. *Id.*

The individual’s therapist also testified. He stated that, although the individual had exercised poor judgment regarding sexual issues, he did not believe that the individual was a sex addict. Tr. at 158. Shortly after the individual began seeing him, the therapist administered the Sexual Addiction Screening Test, a diagnostic tool developed by a preeminent researcher in the field. The individual tested as having only a 25 percent chance of being a sex addict. Tr. at 159. He described the individual’s sex drive as being “high normal,” Tr. at 159, and explained that sex addicts “have a much more compulsive . . . use. It would be, if not daily, almost every day. It would be much more random, promiscuous, any sexual outlet will do. It doesn’t matter if they have a fulfilling relationship at home . . . .” Tr. at 170. He concluded that none of these characteristics apply to the individual. Tr. at 171. Instead, the individual’s therapist testified, the individual has had a “problem” with impulse control. Tr. at 159. However, due largely to his work with the individual in recognizing the “triggers” for his behaviors and coping with his impulses, he believed the individual’s prognosis to be “good.” Tr. at 163. In any event, he concluded that the individual’s impulse control problem did not rise to the level of a mental condition that caused or could cause a significant defect in his judgment or reliability. Tr. at 164-165.

The conclusions of the individual’s therapist find greater support in the record than do those of the DOE psychiatrist. I found convincing the testimony of the therapist that sex addicts generally have a “much more compulsive” involvement with sex than that displayed by the individual. As set forth above, the Notification Letter alleges that the individual patronized prostitutes on 30 occasions during the nearly thirty-year period between 1982 and 2011. Moreover, in contrast to the therapist’s characterization of sex addicts, the record indicates that the individual was not engaging in problematic sexual behaviors during periods of time in which he enjoyed “a fulfilling relationship at home.” Two of his encounters with prostitutes happened in the early ‘eighties, before the individual married his first wife in 1987, several other encounters happened in the early ‘nineties either while the individual was on military deployment and away from his first wife or when he was in the process of divorcing his first wife, approximately 12 trysts occurred between the time he divorced his first wife in 1993 or 1994 and the time he met his second wife, in 1997, and the remainder took place between 2005 and July 2011, a period of time

during which the individual was experiencing problems with the sexual aspect of his second marriage and, as a result, was not having sex with his wife. DOE Ex. 7 at 22-40, Tr. at 90-95. Regarding this time, the individual testified that he “wasn’t fond of using prostitutes,” but did so “because I wasn’t having relations with my wife.” Tr. at 95. During his September 5, 2012, PSI, the individual said that he and his wife had not had sex since “at least 2004.” DOE Ex. 8 at 47. The individual’s wife confirmed this during her testimony. Tr. at 56. The incidents of inappropriate conduct of a sexual nature while at work also happened during this period.

I also attribute greater weight to the therapist’s testimony than to that of the DOE psychiatrist because of the therapist’s greater familiarity with the individual. The therapist has had 21 sessions with the individual since September 2012, whereas the DOE psychiatrist met with the individual once, for about two hours. Tr. at 152-153, 182. For these reasons, I find that no significant security concerns remain under criterion (h).

## **B. Criterion (l)**

I reach a different conclusion, however, with respect to criterion (l). Although, for the reasons discussed above, I do not believe that the individual suffers from an illness or mental condition that causes, or could cause, a defect in his judgment and reliability, I find that there is an unacceptably high risk that the individual will engage in future illegal or inappropriate behavior of a sexual nature. I base this conclusion primarily on the lack of a completely satisfactory primary romantic relationship, and the individual’s history of sexual misconduct in the absence of such a relationship.

At the hearing, the individual’s wife testified about the couple’s sexual dysfunction and their attempts to address it. She said that “at some point [her] sex drive just dropped,” and that she and the individual sought professional counseling in 2008 to “help me to get through that.” Tr. at 55. However, the counselor’s approach “just didn’t agree with” the individual’s wife, and after nine months, they stopped seeing her. Tr. at 56-57.<sup>3</sup> Approximately seven months before the hearing, the wife began going to another counselor, this time without the individual. The individual’s wife testified that the two of them worked on the wife’s “low physical self-esteem,” which the counselor saw as a potential reason for the wife’s low libido. Tr. at 81. She stopped seeing this counselor during the month before the hearing, because the individual’s wife was satisfied with the progress that she had made. Tr. at 72. When asked about the current state of her sex life with the individual, the wife replied that it was “a work in progress,” and that they had “attempted” physical relations “on a few occasions” over the last six months. Tr. at 74, 82.

When asked about his goal concerning the frequency of sexual relations with his wife, the individual replied that “once a month would probably be enough.” Tr. at 143. He admitted, however, that they were still “a ways away from that.” *Id.*

Given the individual’s therapist’s description of the individual’s libido as “high-normal,” Tr. at 159, I am skeptical that “once a month” will truly be satisfactory for the individual over the long term. This is especially the case given the individual’s stated intention to curtail and eventually

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<sup>3</sup> They briefly resumed seeing this counselor in “2009 or early 2010.” Tr. at 59.

end his use of pornography, which would sometimes lead to self-gratification. Tr. at 144-145. Even if that level of sexual activity with his wife would prove to be satisfactory, I have substantial doubts as to whether they will achieve it, especially given the wife's apparent satisfaction with a level of professional help that had, as of the date of the hearing, led to only several "attempts" at sexual activity over a six-month period. In the absence of a satisfactory outlet for the individual's sexual urges, I am concerned that the individual will revert to the pattern of illegal or inappropriate behavior described in the Notification letter; behavior that, as described above, has generally occurred when the individual has not had a satisfying primary romantic relationship.

I am also concerned that a resumption of the individual's use of prostitutes would leave him vulnerable to coercion that could cause him to act contrary to the best interests of the national security. The individual testified credibly that he loves his wife and that his marriage was "very important," Tr. at 100-101, and his wife told him that if he patronized a prostitute again, she would leave him. Tr. at 69. It is certainly conceivable that a foreign agent could use the threat of disclosure of any infidelity to exert influence on the individual. For these reasons, I find that substantial doubts remain under criterion (l) regarding the individual's eligibility for continued access authorization.

## **V. CONCLUSION**

For the reasons set forth above, I find that the individual has adequately addressed the DOE's security concerns under criterion (h), but that valid concerns remain regarding his history of illegal and inappropriate behavior. He has therefore failed to mitigate the DOE's security concerns under criterion (l). Consequently, he has failed to convince me that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's 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.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: November 6, 2013