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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:	August 29, 2013)	Case No. PSH-13-0100
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_____)

Issued: February 4, 2014

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should not restore the individual’s access authorization at this time.

I. BACKGROUND

The individual works for a DOE contractor in a position that requires him to maintain a DOE access authorization. In March 2013, the individual used profanity in an interaction with his supervisor. He had displayed inappropriate behavior in the workplace in the past and his management had addressed it in the past. As a result of the March 2013 incident, the individual

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

received a written reprimand. Exhibit (Ex.) 7. He was also placed on a Performance Action Track to address his behavior and ongoing performance deficiencies. Ex. 6. In May 2013, the individual participated in a Personnel Security Interview (PSI) that the Local Security Office (LSO) conducted to discuss the incident. Ex. 10. In June 2013, a DOE consultant psychologist (DOE psychologist) evaluated the individual and issued a report in which she diagnosed the individual as suffering from a form of personality disorder that, in her opinion, causes or may cause a significant defect in his judgment or reliability. Ex. 4. In August 2013, the LSO informed the individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8(h) and (l) (Criteria H and L, respectively).² See Ex. 1 (Notification Letter, August 1, 2013). The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The individual requested a hearing on this matter. Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced ten numbered exhibits into the record and presented the testimony of one witness, the DOE psychologist. The individual submitted 11 exhibits (Exhibits A through K), testified on his own behalf, and presented the testimony of two psychologists. Transcript of Hearing, Case No. PSH-13-0100 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including “the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of 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,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See 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).

² Criterion H concerns information that a person 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. § 710.8(h). Criterion L concerns information that a person has “engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy. . . .” 10 C.F.R. § 710.8(l).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Hearing Officer must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test requires that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT

By his own admission, the individual has had problems getting along with co-workers and supervisors since at least 1991. Ex. 9 (OPM Report, October 30, 1995) at 4-5. These problems have occasionally led to displays of anger, most usually loud and not physical, and outbursts in workplace settings. *Id.* at 4-5, 8. He has received written warnings and formal counseling for his behavior.

Three incidents of aggressive and inappropriate workplace behavior, as well as one outside the workplace, have been documented in the past several years. In 2007, he engaged in an altercation with two other facility users at the on-site Wellness Center, which involved shouting and pushing. As a consequence of this outburst, the Wellness Center restricted the individual from the Center for a week, and reported the incident to the employee relations office, which forwarded the concern to the individual’s supervisor. Ex. 8 (OPM Report, September 22, 2009) at 10. In 2008, his supervisor counseled him and issued him a written reprimand for insubordination and for harassing and yelling at fellow employees. *Id.* at 10-11. A traffic incident took place in 2010, in which the individual, driving his car, was close enough to a bicyclist that the bicyclist reached out and hit the car with either his hand or his bicycle lock. The individual pursued the bicyclist, who stopped at a fire station. The individual approached the bicyclist, carrying an opened knife in his hand. He retreated when a fireman shouted that he was holding a knife. Ex. 4 (DOE Psychologist’s Report of Evaluation, June 30, 2013) at 4-5.

Finally, in March 2013, the individual displayed his anger and used profanity in an interaction with his immediate supervisor. He was angry about a management decision that affected his area of expertise, and later expressed remorse at his behavior. *Id.* at 2. He was issued a written reprimand due to recurrent inappropriate behavior, specifically for three incidents within the previous six months in which he “used strong profanity in angry rants about management.” Ex. 7. He was also placed on a Performance Action Track (PAT) pursuant to site policy, because his behavior had been identified as continuing performance deficiencies that had been brought to his attention in his 2011-2012 performance appraisal and had not seen improvement. *Id.* The PAT itself referred both to deficiencies in the individual’s 2011-2012 personnel appraisal and to the 2008 counseling memorandum issued to him. Ex. 6. Initially set to last for two months, it listed specific expectations placed upon the individual during that period, including no use of profanity and no yelling or angrily engaging others in any communication. *Id.* The term of the PAT was extended for an additional month. A report signed by the individual’s supervisor

indicates that the individual successfully complied with the terms of the PAT. Ex. K. Upon completion of the PAT, the individual was subject to a two-year probation period, during which he faces termination for failure to control his anger. Ex. 10 at 41; Tr. at 44-45.

The individual offered justification for these outbursts. The theme underlying each justification is that he was a victim and not an aggressor. For example, he describes the 2007 Wellness Center event as the reaction to two facility users forcing him to get off a piece of exercise equipment he was using. Ex. 4 at 4, 8. His version of the 2008 incident was that he was questioning a fellow employee whose behavior the individual found to be inappropriate. Ex. 8 at 6-7. According to the individual, the bicyclist in 2010 had struck and possibly damaged his car. Ex. 4 at 4. Regarding the March 2013 outburst, he was challenging what he believed to be an unwise decision taken by unqualified and uninformed management officials, which was later overturned by their superiors. Ex. 10 at 23, 42. He has acknowledged, in hindsight, that his behavior in these circumstances was inappropriate. For example, in discussing his use of profanity in March 2013, he stated that he was “not pleased with how I acted.” *Id.* at 20. *See also* Tr. at 59, 73. Despite the individual’s justifications for his behavior on these occasions, he does not challenge that these events in fact occurred, and I find that his behavior on these occasions was inappropriately aggressive under the circumstances.

In her evaluative report of the individual, the DOE psychologist identified the mental health issue as situations in which he has lost control “in ways which at best concern and disturb others, and at worst frighten, intimidate, or feel threatening to them.” Ex. 4 at 15. After reviewing a number of possible disorders that might explain his behavior, the DOE psychologist determined that the most appropriate diagnosis was Other Specified Personality Disorder, Mixed Personality Features, as described in the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). *Id.* at 13-14, 16. She found that the individual met the required criteria for General Personality Disorder, including the fact that his pattern of anger, intimidation, and mistrust began at least by his adolescence; that his emotional reactions, interpersonal functioning, and impulse control are affected; and that his behavior is an enduring pattern across a range of situations. *Id.* at 15. Within that category of disorder, she determined that the individual has “traits of both paranoid and narcissistic natures”. *Id.* According to the DOE psychologist, he meets several criteria for Paranoid Personality Disorder—such as distrust of others, guardedness, interpretation of actions as threatening, and counterattacks to those actions—and several criteria for Narcissistic Personality Disorder—such as sense of self-importance, need for excessive admiration, and lack of empathy—but does not meet enough criteria for either of those disorders to be diagnosed as suffering from either. *Id.* at 16. As a result, her diagnosis of the individual was Other Specified Personality Disorder, Mixed Personality Features. In her opinion, the individual’s personality disorder causes or may cause a significant defect in judgment or reliability. *Id.*

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, upon review of the individual’s complete personnel security file, including the DOE psychologist’s report, the LSO issued a Notification Letter identifying security concerns under Criteria H and L of the Part 710 regulations. Ex. 1. With regard to Criterion H, the LSO relies on the DOE psychologist’s opinion that the individual meets the DSM-5 criteria for Other

Specified Personality Disorder, Mixed Personality Features, and that the individual's personality disorder causes or may cause a significant defect in judgment or reliability. I find that there is ample information in the Notification Letter to support the LSO's reliance of Criterion H. The individual's aggressive reactions to stressful circumstances, particularly those that occurred in 2007, 2008, 2010, and 2013, which are described above, constitute behavior that casts doubt on the individual's judgment, reliability and trustworthiness. Adjudicative Guidelines at Guideline I, ¶ 28(a). The DOE psychologist's conclusion that the individual's personality disorder is severe enough to cause a significant defect in judgment, most recently in March 2013, supports my finding in this regard. *Id.* at ¶ 28(b).

In support of its Criterion L concerns, the LSO cites the individual's behavior in the workplace, beginning with his admission of problems with co-workers in the 1990s, progressing through the 2007 and 2008 incidents, and ending with the March 2013 event, which resulted in his being issued a written reprimand and being placed on a three-month PAT and a two-year probation for his angry outburst and use of profanity. This pattern of disruptive and inappropriate behavior in the workplace raises questions about the individual's judgment, trustworthiness, and reliability that may affect his ability to properly safeguard protected information. Adjudicative Guidelines at Guideline G, ¶ 26(d)(3). Based on the above-mentioned facts related to the individual's history of outbursts and aggressive behavior, I find that the LSO had sufficient grounds for invoking Criterion L.

V. ANALYSIS

In making a determination regarding the individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to find that restoring the individual's suspended DOE 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).

The individual does not dispute that on several occasions he had difficulty controlling his anger and he reacted unprofessionally at the least and, in some instances, threateningly. At the hearing, he testified that his behavior was unacceptable during the 2007 Wellness Center scuffle and that his use of profanity to describe his female supervisors was inappropriate. Tr. at 58-59. He asserts that through counseling he has gained insight into the reasons for losing his temper in the past, has learned how to handle his anger and will treat others respectfully in the future. *Id.* at 52, 61-63.

Criterion H: Illness or Mental Condition

Two psychologists testified on behalf of the individual at the hearing. Each challenged the DOE psychologist's opinion that the appropriate diagnosis for the individual is Other Specified Personality Disorder. One psychologist (Psychologist #1) evaluated the individual in 2011 and diagnosed him at that time with Adjustment Disorder. Ex. C at 6. At the hearing, she expressed her opinion that the DOE psychologist's diagnosis was incorrect for a number of reasons. She maintained that the individual did not meet the criteria for any form of personality disorder,

because one criterion of that disorder requires an “enduring pattern of inner experience and behavior deviates markedly from the expectations of the individual’s culture.” DSM-5 at 646.³ A second criterion for personality disorder is that the “enduring pattern is inflexible and pervasive across a broad range of personal and social situations.” *Id.* In Psychologist #1’s opinion, the individual meets neither of these criteria. As for the first, she testified that the individual had grown up in a rough neighborhood where fighting in school was “probably culturally consistent” and “self-defense is probably necessary.” Tr. at 103-04. She also argues that the individual does not meet the second criterion—the pattern being inflexible and pervasive—because he has generally received high performance ratings throughout his long career; such success “in inconsistent with a diagnosis he’s been given of both narcissism and paranoia.” *Id.* at 108. She noted that the DSM-5 recommends that personality disorders be assessed through multiple sessions spread out over time. *Id.* at 99; DSM-5 at 647. For that reason, she believed that the most accurate assessment was performed in 2011 by the on-site medical staff, because that evaluation, in contrast to hers in 2011 and the DOE psychologist’s in 2013, took place over many hours and many sessions and included information obtained from collateral sources. Tr. at 100. That evaluation concluded that the individual showed narcissistic and paranoid traits, but no personality disorder, and she concurred with that assessment. *Id.* at 95, 105-06.

The second psychologist who testified on behalf of the individual (Psychologist #2) evaluated him in 2013, after reviewing the DOE’s psychologist’s evaluation. At the hearing, he agreed with Psychologist #1 that the individual had narcissistic and paranoid traits that did not rise to the level of a personality disorder. *Id.* at 150. He administered some of the same psychological tests that the DOE psychologist did, but interpreted them differently. *Id.* at 149-51. He conceded, however, that the individual has “some big-time issues,” including anger issues that arose in his childhood. *Id.* at 150-51. He later described these as “long-term traits, but I don’t think we see adequate criteria to . . . merit it a personality disorder.” *Id.* at 158. He stated that the individual has “a problem of some kind,” but the amount of stress in his life means “we don’t know what we have.” *Id.* at 172. Finally, he testified that, in his opinion, the individual can control his behavior through counseling, which will help him develop coping skills. *Id.* at 158. He believed that the two-year probation period now gives him the motivation to control his behavior in the workplace, and advised extending the probationary period to maintain that motivation. *Id.* at 159.

After hearing the testimony of the two psychologists who appeared on behalf of the individual, the DOE psychologist did not alter her opinion regarding her diagnosis of the individual’s condition. She explained that in her opinion, the individual displayed an enduring, inflexible, and pervasive pattern of behavior arising from uncontrolled anger—enduring since childhood; inflexible in that certain situations consistently trigger inappropriate and maladaptive feelings, responses, and reactions; and pervasive despite the gaps in time when no outbursts were documented. *Id.* at 187, 211-12. Consequently, she stood by her diagnosis of personality disorder.

³ Psychologist #1 actually misstated the DSM-5 criterion when she testified that it required that the enduring pattern “does not deviate” from cultural expectations. Tr. at 98. In light of the position she espoused, I assume that this was merely a slip of the tongue.

The individual contended at the hearing that the DOE psychologist's diagnosis must fall because five other mental health professionals evaluated the individual and have not diagnosed him in the same manner. I find this argument unavailing. Four of these evaluations, including that of Psychologist #1 and that of the on-site medical staff, occurred in 2011, before the individual's most recent outburst in 2013, which management deemed serious enough to place him on a PAT and on probation with the possibility of termination. While Psychologist #1 posits that the on-site medical staff evaluation is the most reliable, due to its depth and its investigation of collateral sources, it predates and therefore does not consider the individual's most recent manifestation of his mental health condition.⁴ The individual also urges that I consider his behavior in light of its infrequency of occurrence and within the cultural backdrop of his youth. The DOE psychologist clearly considered those factors at the hearing and maintained that her diagnosis was nevertheless correct. I cannot find that her diagnosis is based on an incorrect or incomplete understanding of the facts in this case. I recognize that professional differences of opinion may exist and, in this case, do exist between the DOE psychologist and Psychologist #2, the only other mental health professional to evaluate the individual following his last outburst in March 2013. I note, however, that they appear to agree that, regardless of the diagnosis, the individual has a mental health condition that detrimentally impacts his interactions with others under certain stressful circumstances. I therefore find no reason to give less weight to the DOE psychologist's diagnosis than to any opinion presented regarding the individual's mental health.⁵

With respect to the security concerns cited in the Notification Letter under Criterion H, the Adjudicative Guidelines identify the following possible mitigating factors: "demonstrated ongoing and consistent compliance" with a treatment plan for a condition amenable to treatment; voluntary participation in counseling or a treatment program with a favorable prognosis by a duly qualified mental health professional; a recent opinion by a duly qualified mental health professional that the condition is under control "and has a low probability of recurrence or exacerbation;" and no indication of a current problem. Adjudicative Guidelines at Guideline I, ¶ 29. While I acknowledge that the individual has successfully completed his PAT, it is a

⁴ Were I to rely on that evaluation, I would also take notice of statements by collateral sources reported in that evaluation, which illustrate how the individual revises events to present himself in the best light. *See, e.g.*, Ex. 4 at 7-8. I have noted this behavior in the record. For example, when referring to a previous security clearance suspension that was ultimately resolved in his favor, he reported to an interviewer that it was restored in the "[s]hortest time I think . . . anybody's ever lost their clearance." Ex. 10 at 49. Moreover, regarding the 2010 encounter with the bicyclist, the individual denied that he approached the bicyclist with a knife in his hand, despite the eyewitness report to the contrary. Ex. 4 at 7.

⁵ Even if I accepted the position that the individual was best described as having narcissistic and paranoid traits, that opinion would still raise a doubt as to his eligibility for access authorization. According to the regulations, information establishing that an individual has "an illness or mental *condition* of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability" raises security concerns. 10 C.F.R. § 710.8(h) (emphasis added). We have previously held that personality traits or behaviors may form the basis for a Criterion H concern, provided they "cause[], or may cause, a significant defect in judgment or reliability" in the opinion of a qualified professional. *See Personnel Security Hearing*, Case No. PSH-13-0061 (August 22, 2013). *See also* Adjudicative Guidelines, Guideline I, ¶ 27 ("Certain emotional, mental, and personality *conditions* can impair judgment, reliability or trustworthiness.") (emphasis added).

personnel tool and no way constitutes a treatment plan for a mental health condition. The individual has, however, attended counseling in the past, and resumed counseling about two months before the hearing. Tr. at 49-50; Ex. I. His present counselor did not testify at the hearing, but provided his opinion of the individual's current status in a letter. Ex. I. The counselor explained that his "therapeutic interventions with [the individual] have centered around increasing his insight into his behavior and intentions, as well as develop[ing] skills to more effectively respond to his environment and the people in it." *Id.* He stated that the individual "has been reasonably open to these interventions and has made some stride to improve his presentation." *Id.* Due to the short period of psychotherapy, his opinion was that the individual's progress was "guarded," but would improve to "good" with continued work. *Id.* Psychologist #2 testified that, "maybe . . . there's some good chance" that the individual would be able to control his behavior in the workplace for three years, until his retirement, "with a lot of structure and a lot of support." Tr. at 175-76. After hearing all the testimony, the DOE psychologist expressed her opinion that the individual's current therapy is appropriate, but in light of its short duration, she placed the risk of relapse of workplace outbursts at moderate. *Id.* at 215.

The individual himself testified that he will never again lose his temper at work, even after his probationary period ends; he stated that the risks to his work and to his family are simply too high. *Id.* at 231. I recognize the individual's position, and I believe that he certainly intends to control his temper for the remainder of his career. He is engaged in psychotherapy that all the mental health experts deem to be appropriate and effective. Three professionals, including two who appeared on his behalf, believe he will ultimately succeed in his efforts to control his behavior; none, however, has given him a favorable prognosis at this time. As of the hearing, his progress in therapy was "guarded," and he remains at moderate risk of relapse. Consequently, I cannot find that he has mitigated the Criterion H concerns that his mental health condition has raised.

Criterion L: Unusual conduct

Similarly, the individual has not mitigated the Criterion L concerns. While the individual does not display disruptive and inappropriate behavior on a regularly occurring basis, his outbursts do occur under certain circumstances, most often when he feels he has not been paid the respect he is due. It is normal to feel hurt in such a context, but it is unusual to react by lashing out with profanity, particularly in a workplace setting, or chasing down and approaching a bicyclist wielding a knife. These reactions demonstrate poor judgment and lack of control of anger, regardless whether such behaviors are considered acceptable in the culture in which he was raised. They are unacceptable in the workplace, regardless of his opinion that he is far more competent than his supervisors. In considering the individual in a whole-person context, I also note his demonstrated tendency to alter facts in order to place himself in an extremely positive light. *See* n.4 above. He is, at least in some situations, an unreliable reporter of events, which raises in my mind questions about his reliability and trustworthiness.

Among the factors that may serve to mitigate security concerns raised by an individual's unusual personal conduct are that "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does

not cast doubt on the individual's reliability, trustworthiness, or good judgment," that "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." Adjudicative Guidelines at Guideline E, ¶ 17(c), (d). In this case, the individual's aggressive behavior, while relatively infrequent, revealed itself quite recently, is of a serious nature, and is likely to recur as long as he must continue to work for supervisors he believes are incompetent. To his credit, the individual has engaged in voluntary treatment to address his anger and other issues that cause inappropriate behavior in the workplace. His therapy is, however, ongoing, and the consensus of the mental health professionals who evaluated him, or are working with him, since his latest outburst is that it is too early to conclude that he has his anger under control and will not repeat his inappropriate behavior in the future. Based on these facts and the opinions of experts in the mental health arena, I find that the individual has not mitigated the Criterion L concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the individual's eligibility for a security clearance under Criteria H and L of the Part 710 regulations. I also find that the individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the individual's suspended DOE 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). Accordingly, I find that the DOE should not restore the individual's suspended DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: February 4, 2014