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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	June 8, 2015)	
)	Case No.: PSH-15-0047
)	

Issued: September 11, 2015

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored at this time.

I. Background

The individual is employed by the DOE in a position that requires her to hold DOE access authorization. In November 2014, the individual’s manager filed a Personnel Security Information Report (PSIR) with the Local Security Office (LSO) reporting concerns about the individual’s behavior in the workplace, including that the individual had interpreted her supervisor’s attempts to schedule her annual performance review as threatening and, as a result, had called 9-1-1 to report that her supervisor was stalking her. *See* Exhibit 7. Subsequently, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on December 16, 2014. *See* Exhibit 8. Since

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.

the PSI did not resolve concerns about the individual's behavior, the LSO referred the individual for evaluation by a DOE consulting psychiatrist, who conducted a psychological evaluation of the individual on February 26, 2015. *See* Exhibit 6.

Since neither the PSI nor the DOE psychiatrist's evaluation resolved the security concerns arising from the individual's behavior, the LSO informed the individual in a letter dated April 6, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (h) (hereinafter referred to as Criterion H).² *See* Exhibit 1.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced nine numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychiatrist. The individual, represented by counsel, introduced no exhibits into the record and presented the testimony of one witness, herself. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.³

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward with evidence to convince the DOE that granting or restoring his or her 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 individual is afforded a full opportunity to present evidence supporting his or her

² See Section III below.

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.doe.gov/search.htm.

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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's 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 am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited one criterion as the basis for suspending the individual's security clearance: Criterion H. 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). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." See Guideline I of the *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). Conduct influenced by such psychological conditions can raise questions about an individual's ability to protect classified information. With respect to Criterion H, the LSO relied on the March 2015 report of the DOE consulting psychiatrist in which he opined that the individual met the criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)*, for Delusional Disorder, Persecutory Type (primary diagnosis), and Bipolar I Disorder, most recent episode manic, in full remission. Additionally, the DOE psychiatrist concluded that (1) the individual's Delusional Disorder is causing a significant defect in her judgment or reliability, and (2) since the individual fails to acknowledge her Bipolar I disorder and takes no psychiatric medication to treat it, the individual is likely to suffer a manic episode in the future which would generally be expected to cause a significant defect in judgment or reliability. Ex. 1; Ex. 6 at 1, 9, 13.

In light of the information available to the LSO, the LSO properly invoked Criterion H.

IV. Findings of Fact

In November 2014, the individual's manager filed a PSIR to report concerns about the individual's workplace behavior. The PSIR describes the individual coming to see the manager (accompanied by the manager's supervisor) to report that the individual had

called 9-1-1 to report that her immediate supervisor was stalking her. In the PSIR, the manager described the individual as very agitated, flushed and wide-eyed and rambling in her speech during their meeting. The two managers believed that the behavior which the individual perceived as threatening and stalking was actually an attempt by the individual's immediate supervisor to schedule the individual's annual performance review. The individual agreed to meet with her supervisor for the annual review only in the presence of the manager. In the PSIR, the manager reported that the individual's immediate supervisor had reported to the manager that the individual's workplace behavior was erratic and disruptive and that it was escalating. Ex. 7. The individual acknowledges making the 9-1-1 call and her requests for the presence of the manager as a condition of any meeting between the individual and her immediate supervisor. Tr. at 55 – 57.

In February 2015, a DOE consulting psychiatrist evaluated the individual and concluded that: the individual meets the *DSM-5* diagnostic criteria for Delusional Disorder, Persecutory Type; the individual does not acknowledge the presence of the disorder and takes no medication for its treatment; and the individual's Delusional Disorder is causing a significant defect in her judgment or reliability. Ex. 6 at 1, 9 – 10.

Additionally, the DOE psychiatrist also concluded that the individual meets the *DSM-5* diagnostic criteria for Bipolar I Disorder, most recent episode manic, in full remission, and that she has likely experienced two or three episodes in the past. At the time of the psychiatric evaluation, the individual did not acknowledge the Bipolar I Disorder and took no psychiatric medication to treat it and, therefore, the DOE psychiatrist concluded that she is likely to suffer additional episodes in the future. Since manic episodes generally cause significant defects in judgment or reliability, the psychiatrist opined that the individual's Bipolar I Disorder may cause a defect in her judgment or reliability. *Id.* at 1, 9 – 11.

The individual does not believe that she suffers from any psychological disorders, she has sought no psychological evaluation subsequent to receipt of the Notification Letter, and she is not receiving treatment for any psychological disorders. Tr. at 62, 78 – 79, 87 – 82, 154.

At the hearing, the DOE consulting psychologist, who had been present throughout the hearing, testified as the final witness. He testified that the individual continued to warrant both diagnoses, although both disorders are treatable. *Id.* at 161, 209.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁴ and the Adjudicative

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct,

Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The individual disputes the legitimacy of both diagnoses of the DOE consulting psychiatrist. With respect to the *DSM-5* diagnosis of Delusional Disorder, Persecutory Type, the individual argues that the DOE consulting psychiatrist is misinterpreting her workplace behavior. She believes that she has an immediate supervisor who is difficult to work with and who has targeted her since the individual started her job.⁵ She believes her attempts to address legitimate workplace complaints are being improperly interpreted to justify an inaccurate psychological diagnosis. Tr. at 17 – 62, 82.

With respect to the *DSM-5* diagnosis of Bipolar I Disorder, the individual argues that the DOE consulting psychiatrist has confused certain physical conditions for psychological conditions. The individual believes that she has had certain medical conditions (e.g., severe anemia, malnutrition, severe insomnia, hypothyroidism, and menopause) for which she has received medical treatment over the years and that the DOE psychiatrist is improperly using her history of physical ailments as the basis for a Bipolar I diagnosis. She believes that the DOE psychiatrist is ascribing psychological significance to health issues which are strictly physical. *Id.* at 62 – 82, 154.

For these reasons, the individual has sought no psychiatric or psychological treatment. She believes that all of the underlying physical conditions relied upon by the DOE consulting psychiatrist in making his diagnosis can be effectively treated by her health care providers, as matters of physical health issues or pathology. *Id.* at 81 – 82, 154 – 155.

Based on the foregoing, the individual argues that she has mitigated the security concerns cited by the Notification Letter.

B. Administrative Judge Evaluation of the Evidence

While I do not doubt the sincerity of the individual's disagreement with the diagnoses of the DOE consulting psychiatrist, such sincerity is insufficient to mitigate Criterion H security concerns. With regard to security concerns raised under Criterion H, Administrative Judges traditionally accord deference to the opinions of mental health

the age and maturity at the time of the conduct, the voluntariness of his 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.

⁵ Although it would not have changed my determination, I note that the individual did not submit into the record of the administrative review hearing the written warning, reprimand or suspension that she testified had been overtly threatening or any other documentary or testimonial evidence which would corroborate her own testimony on the workplace environment.

professionals. *Personnel Security Hearing*, Case PSH-14-0095 (October 22, 2014) at 7. In this case, the individual relies on the earnestness of her beliefs without providing any support that those beliefs are informed or influenced by any mental health professionals. While the absence of a current mental health condition could resolve a Criterion H security concern, the individual has provided no expert psychiatric or psychological evaluation that would support such a conclusion. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(c), (e). Further, Criterion H security concerns may be resolved upon evidence of appropriate and adequate treatment; however, in this case the individual does not believe she needs treatment and, therefore, has sought no treatment for mental health conditions which the DOE psychiatrist has opined are treatable. *Cf. Id.* at Guideline I, ¶ 29(a), (b).

Additionally, the DOE consulting psychiatrist testified at the hearing that information that he first heard during the individual's testimony bolstered his diagnosis. At the hearing, the individual testified that she had previously been diagnosed as having either Bipolar Disorder or "psychosis" upon a hospitalization in 2011; this information was not previously reported to the DOE psychiatrist, but is consistent with his evaluation that the individual had experienced a manic episode at that point in time. *Tr.* at 74, 137 – 138, 150. The individual also described at the hearing a period of time following an earlier hospitalization which the DOE psychiatrist testified was likely a depressive episode. He noted that the individual had not previously reported any depressive episodes which was unusual as such an episode would have been expected to have occurred in a traditional presentation of Bipolar Disorder. *Id.* at 178 – 179.

The individual has expressed no willingness to explore whether the Criterion H security concerns have any merit. While she testified that she believed she suffered only from physical health problems and that she intended to rely upon her medical health providers for treatment of the physical conditions that were noted by the DOE psychiatrist as symptoms of psychiatric disorders, she had not shared the evaluation of the DOE psychiatrist with any of her health care providers (notwithstanding that she had had medical appointments subsequent to her receipt of the Notification Letter). *Id.* at 81 – 82, 155 – 156, 163 – 167.

Based upon the foregoing, I find that the individual has not resolved the Criterion H security concerns at this time.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with Criterion H. Accordingly, I

have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: September 11, 2015