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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: June 10, 2015	)	Case No.: PSH-15-0049
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Issued: September 14, 2015

**Administrative Judge Decision**

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization<sup>1</sup> 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 grant the Individual an access authorization at this time.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to maintain a DOE security clearance. On September 14, 2014, the Individual attempted suicide while at his workplace. During a Personnel Security Interview (PSI) on October 2, 2014, the Individual explained that, a few months before his suicide attempt, he discovered that his fiancée, who works with him, cheated on him with another colleague. After ending their engagement, the Individual continued to work with his ex-fiancée and became depressed. A DOE-consultant psychologist (Psychologist) evaluated the Individual on March 20, 2015, and diagnosed him with two episodes of Dissociative Amnesia with Dissociative Fugue (extreme psychological responses

<sup>1</sup> 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.

to stressful situations). On May 5, 2015, the Local Security Office (LSO) informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance (Notification Letter). The Notification Letter explained that 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) (Criterion H).<sup>2</sup>

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the Individual presented his own testimony and one exhibit, which was marked as Exhibit A. The LSO presented the testimony of one witness, the Psychologist, and eleven exhibits, marked Exhibits 1 through 11. *See* Transcript of Hearing, Case No. PSH-15-0049 (“Tr.”).

## 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 (1998) (“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 restoring his 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 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.

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<sup>2</sup> Criterion H relates to information that a person suffers from “[a]n 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).

## **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.* In considering these factors, the Administrative Judge 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).

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites one criterion as the basis for suspending the Individual's security clearance, Criterion H. It is well established that "certain emotional, mental and personality conditions can impair judgment, reliability, or trustworthiness." See Adjudicative Guidelines at Guideline I. Such psychological conditions can effect an individual's conduct and raise questions about an individual's ability to protect classified information.

With respect to Criterion H, the LSO relied on the opinion of the Psychologist who concluded that the Individual suffered two episodes of Dissociative Amnesia with Dissociative Fugue, as set forth in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). She further determined that the Individual's "inadequately developed coping resources and skills, susceptibility to depression, tendencies to minimization, denial of strong emotions, and his holding others responsible for his life situation, indicate that he has a mental condition which causes, or may cause, a significant defect in judgment or reliability." Ex. 7 at 14. In light of the Psychologist's opinion, I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion H.

## **IV. Findings of Fact**

After his September 14, 2014, suicide attempt, the Individual voluntarily checked into an inpatient mental health program. Tr. at 14. During this treatment, which lasted about a week and a half, the Individual participated in group therapy sessions, outdoor therapy, and sessions with psychiatrists and other medical professionals. Tr. at 39-40. The Individual testified that during a goal setting exercise, he made the goal "to be the best person [he] could be and to enjoy each day to the best of [his] ability." Tr. at 41. After completing the inpatient program, the Individual immediately began outpatient treatment which consisted of sessions with a psychiatrist, therapy with a counselor, and taking fluoxetine (an anti-depressant), and melatonin (for sleep). Tr. at 44.

The Individual saw his psychiatrist on three occasions, in October 2014, December 2014, and February 2015, and his last meeting with his counselor was in April 2015. Tr. at 45-46. Additionally, the Individual stopped taking the melatonin in November 2014 and the anti-depressant in April 2015. Tr. at 45-46. At the time of the hearing, it had been approximately four months since the Individual received any form of treatment. Tr. at 47.

The Individual testified that after treatment, he feels as though he is back to his old self. Tr. at 47. Although some days are easier than others, he believes that he is coping well. *Id.* He stated that he believes he could deal with any future depression more easily than before because he now knows the warnings signs that might indicate he needs to return to treatment. Tr. at 48. He also testified that he has a great support network and that he would heed the counsel of those in that network if they felt he needed to restart treatment. Tr. at 48. The Individual testified that he believes his depressive episode was unprecedented and that he has navigated many stressful events throughout his life successfully, with the event that triggered his suicide attempt being the exception. Tr. at 53; Ex. A (Figure 1).

The Psychologist testified that she made her diagnosis after a two-hour clinical interview, the administration of two psychological tests<sup>3</sup>, and after reviewing the records relating to the Individual's inpatient and outpatient treatment.<sup>4</sup> Tr. at 69-70. Based on those records, the Psychologist stated that there was a consistent diagnosis of a depressive order.<sup>5</sup> Tr. at 71. The Psychologist further states that she did not diagnose the Individual with a depressive disorder because, when she met with him, in March 2015, he no longer met the criteria for such a diagnosis, though she believes he did when the diagnoses were made. *Id.*

The Psychologist reiterated her diagnosis of Dissociative Amnesia with Dissociative Fugue. Tr. at 71. She based this on two episodes of dissociative amnesia in which the Individual could not remember the previous several hours. Ex. 7 at 13. She attributed these episodes to overwhelming emotions since no physical cause was ever found. *Id.* She further found that the Individual's "behaviors, thinking processes, impulsivity, inadequate coping skills, some narcissistic traits, grandiosity, and not being completely candid if it casts a negative light on him, combined with his continued risk for depression" make him "susceptible to unpredictable and impulsive actions, becoming unable to manage his life under stress, and demonstrating poor judgment and reliability." *Id.* at 13-14. The Psychologist recommended a year of dialectical behavior therapy as treatment for the Individual's dissociative amnesia with dissociative fugue. Tr. at 96. Without the records from his counselor, the Psychologist expressed concerns about whether the Individual received the appropriate therapy. Tr. at 84-86. In the Psychologist's opinion, the Individual has

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<sup>3</sup> The Psychologist administered the Rorschach test and the Minnesota Multiphase Personality Inventory-2-Revised Form (MMPI-2-RF) test.

<sup>4</sup> Although the Psychologist requested documentation of the treatment conducted by the Individual's counselor, the Psychologist never received any such documentation. Tr. at 70.

<sup>5</sup> These diagnoses included adjustment reaction with depressive features to major depressive disorder, severe. Tr. at 71.

an illness or mental condition that causes or may cause a significant defect in judgment. Tr. at 86.

## 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's DOE security clearance should not be restored. I cannot find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

I find that the Individual has not sufficiently mitigated the security concerns under Criterion H. During the hearing, the Individual did not present any expert testimony challenging the Psychologist's diagnosis of Dissociative Amnesia with Dissociative Fugue or her conclusion that the Individual continues to suffer from an illness or mental condition that may cause a significant defect in his judgment and reliability. Tr. at 86; Adjudicative Guidelines at Guideline I, ¶ 29(c). Instead, the Individual attempted to refute the Psychologist's conclusions by discrediting the approach she took to reach her conclusions. *See* Ex. A. During his cross-examination of the Psychologist, the Individual focused on statements in the Psychologist's report that the Individual should be monitored after receiving the report because she had concerns he might become depressed. Tr. at 90-92; Ex. 11 at 14. This line of questioning seemed to be another attempt to discredit the Psychologist's diagnosis based on the fact that the Individual received the report and did not show signs to warrant her concern. *Id.* Nonetheless, I do not find this argument to be convincing especially since there is no expert testimony before me to confirm that this alleged discrepancy is clinically significant or would otherwise discredit the Psychologist's opinion.<sup>6</sup>

The Individual also attempted to discredit the use of the Rorschach test in the Psychologist's evaluation of the Individual, by citing a Newsweek article that was not submitted into the record. Ex. A. However, the evidentiary value of such an article is outweighed by the expert testimony of the Psychologist. In the absence of convincing expert testimony or other evidence bringing into question significant errors regarding the basis for the Psychologist's opinion, I find that the Psychologist's assessment of the Individual is credible and raises significant security concerns.

The Individual also testified about his inpatient and outpatient treatment, however, he is not currently in treatment and he was unable to articulate clearly how this treatment better prepared

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<sup>6</sup> The Individual also raised other arguments regarding the Psychologist's use of information in arriving at her diagnosis. Ex. A. For the same reasons outlined above, I do not find these alleged failings to be significant enough or supported by a credible expert witness such that I could discount the Psychologist's diagnosis of the Individual.

him for any future depressive episode. Tr. at 64-66; *see* Ex. A. Although the Individual has received treatment for his depression, it is unclear whether this treatment was adequate to ameliorate his Dissociative Amnesia with Dissociative Fugue. Furthermore, during the hearing, the Individual demonstrated some of the traits the Psychologist was concerned about in her report. Ex. 11 at 14. For example, when speaking of his depression and suicide attempt, the Individual minimized its impact on his life. Tr. at 47-48. Calling himself a “survivor of depression,” the Individual does not seem to have internalized his mental health issues or recognized their importance. Tr. at 48 (“I have a tool set where you can easily -- much, much more easily deal with it [depression] in the future”). Based on the evidence presented and the testimony at the hearing, I cannot find that the Individual has presented sufficient evidence to resolve the security concerns raised under Criterion H.<sup>7</sup>

## **VI. Conclusion**

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual’s eligibility for a security clearance under Criterion H of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to resolve the cited security concerns. Therefore, I cannot conclude that granting the Individual a DOE access authorization “will not endanger the common defense and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant the Individual a DOE access authorization at this time.

Richard A. Cronin, Jr.  
Administrative Judge  
Official of Hearings and Appeals

Date: September 14, 2015

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<sup>7</sup> The Adjudicative Guidelines specify as relevant mitigating factors regarding the Individual’s psychological condition: (1) that the Individual’s condition was readily controllable and that he has complied with the treatment plan; (2) that the Individual voluntarily entered counseling or a treatment program with a favorable prognosis; (3), that the past emotional instability was a temporary condition and that the situation has been resolved; or (4) that there was no indication of a current problem. Adjudicative Guidelines at Guideline I, ¶ 29. While I can find that the Individual voluntarily entered into a treatment plan and arguably complied with the plan, this factor is outweighed by the Psychologist’s testimony and my own assessment of the Individual’s acceptance of his illness.