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

In the Matter of: Personnel Security Hearing)

Filing Date: October 19, 2015)

Case No.: PSH-15-0083

Issued: January 29, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.²

I. BACKGROUND

The Local Security Office (LSO) received information concerning the Individual alleging that “he blows up at people and antagonizes others in the organization.” Ex. 3 at 1. In order to address those concerns, the LSO conducted a Personnel Security Interview (PSI) of the Individual on June 6, 2015, and sponsored a forensic psychological examination of the Individual which occurred on July 27, 2015. Because the PSI and forensic psychological examination did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding

¹ 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.

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

his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on October 20, 2015.

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 Treating Therapist), a psychologist serving as an expert witness on behalf of the Individual (the Individual's Expert), an Employee Assistance Program Employee (the EAP Employee), and a DOE consultant psychologist (the DOE Psychologist). *See* Transcript of Hearing, Case No. PSH-15-0083 (hereinafter cited as "Tr."). The LSO submitted seven exhibits, marked as Exhibits 1 through 7, while the Individual submitted nine exhibits, which are marked as Exhibits A through I.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraph (h) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion H refers to information indicating that the Individual 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). Specifically, the Notification Letter alleges that the Individual has been diagnosed by a psychologist with "Post Traumatic Stress Disorder" (PTSD). Ex. 1 at 1. These circumstances adequately justify the DOE's invocation of Criterion H, and raise significant security concerns. 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) state that an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability, or trustworthiness, raises a security concern under Adjudicative Guideline I at ¶¶ 27 and 28(b).

III. REGULATORY STANDARDS

The Administrative Judge'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 the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: 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.

IV. FINDINGS OF FACT

The Individual had experienced a number of traumatic events during his lifetime, including sexual abuse as a child, and a serious motor vehicle accident in which he received a head injury. In November 2012, he sought counseling after experiencing problems in interpersonal relationships and coping with the stress of his work. Tr. at 27; Ex. 6 at 37-38. He originally sought help from his employer's EAP, at the suggestion of a Human Reliability Program psychologist, who was concerned that he might be suffering from depression or PTSD. Tr. at 27-28; Ex. 6 at 38. The EAP Counselor suggested that he see a private counselor. The EAP Counselor also expressed concerns that the Individual suffered from PTSD and depression. Tr. at 27; Ex. 6 at 38. The Individual began seeing a private therapist recommended by the EAP Counselor. Tr. at 30. When that therapist closed her private practice, he began seeing the Treating Therapist. Tr. at 30. The Individual also began receiving drug therapy for his depression from a psychiatrist. Exhibit 6 at 38.

At some time prior to June 11, 2015, someone reported to the LSO that the Individual was blowing up at people and "antagonizing others in the organization." Ex.3 at 1. The informant also incorrectly reported that the Individual was "bipolar" to the LSO. Ex. 3 at 2.

The June 11, 2015, PSI

On June 11, 2015, the LSO conducted a PSI of the Individual. During this PSI, the Individual reported that his workgroup has been under extreme stress. Ex. 6 at 7. The Individual reported that his first line manager "has risen concerns about my conduct." Ex. 6 at 8. He reported that his first line supervisor "feels like I am not allowing the small things to go away [and that] my application of the codes and procedure requirements are inflexible." Ex. 6 at 8. He reported that he had entered into an ombudsman process with his managers to resolve their differences. Ex. 6 at 9. The Individual further stated that his first line supervisor inaccurately reported to the ombudsman that he had acted aggressively towards a coworker. Ex. 6 at 9. The Individual further reported that he had tried to excuse himself from a meeting when a colleague began raising her voice at him. Ex. 6 at 13. He denied raising his voice at this meeting. Ex. 6 at 14. The Individual also reported that he had asked two coworkers to leave the office he shared with one of the two coworkers, after the two other coworkers began a loud argument. Ex. 6 at 15. They responded by yelling at him and he in turn raised his voice at them. Ex. 6 at 15. The Individual recognized that raising his voice at these two coworkers was inappropriate. Ex. 6 at 16. When the interviewer asked the Individual if he had been "creating a lot of tension in the office," the Individual responded by stating that he believed that allegation to be "100 percent inaccurate." Ex. 6 at 16. The Individual attributed this allegation to the fact that he had reported concerns about two employees, who were running personal businesses from their DOE offices, to the Employee Concerns Hotline. Ex. 6 at 16. The Individual also asserted that he, in the line of his assigned duties, had identified serious safety issues which resulted in delays to a significantly behind schedule and over budget project of great importance. Ex. 6 at 16-18. The

Individual stated that his unwillingness to overlook these issues created friction between him and his management.³ Ex. 6 at 16-19. The Individual admitted that some of the language he used in an email he sent concerning these issues contributed to this friction. Ex. 6 at 19. The Individual reported that his employer's ombudsman had been called in to resolve the issues between him and his management. Ex. 6 at 21. The interviewer also asked the Individual: "So some of the information we received indicated that you tend to set coworkers up and then complain or make allegations about them." Ex. 6 at 22. The Individual denied this allegation. Ex. 6 at 22. The Individual also denied antagonizing coworkers. Ex. 6 at 24. The Individual did admit, however, that: "I used to get caught up in the moment with people and then being treated in a confrontational way I would raise my voice, and not excuse myself from the situation, it was typically in response, it was never, it was never, that I initiated, uh, these exchanges." Ex. at 36. The Individual admitted that he was seeing a psychiatrist, and a psychologist, but denied that he was bipolar. Ex. 6 at 35. He indicated that he was being treated for anxiety, mild depression, and mild PTSD. Ex. 6 at 36, 45, 49. The Individual reported that he had confided his mental health treatment to his first line supervisor.⁴ Ex. 6 at 41.

The DOE Psychologist's Evaluation

At the request of the LSO, the DOE Psychologist evaluated the Individual on July 27, 2015. Exhibit 4 at 1. In addition to conducting a 3.5 hour interview of the Individual and conducting psychological testing of the Individual, the DOE Psychologist reviewed portions of the Individual's personnel security file. Exhibit 4 at 2. After completing her evaluation of the Individual, the DOE Psychologist issued a report (the DOE Psychologist's Report) on July 31, 2015. The DOE Psychologist diagnosed the Individual with PTSD under the American Psychiatric Association's Diagnostic and Statistical Manual-Fifth Edition (DSM-5). Ex. 4 at 12. The DOE Psychologist noted that the Individual "has been diagnosed with 'mild depression and/or PTSD' . . . by three mental health professionals." Ex. 4 at 4. She noted further that the Individual's Treating Therapist diagnosed him with major depressive disorder⁵ and PTSD. Ex. 4 at 5. The DOE Psychologist reported that the Treating Therapist found that the Individual's insight and willingness to take responsibility have "increased steadily" since he began treatment with her. Ex. 4 at 6. She noted that the Individual has been monitored by a psychiatrist who has prescribed him Bupropion and Vilazodone for his depression. Ex. 4 at 6. While the DOE Psychologist opined that the Individual had made progress during his treatment, she further found that:

That work is still in progress, and has not yet solidified or deepened in a way which precludes his continuing to feel justified in his reactions when others find

³ The Individual stated: "The situation that I seemed to be routinely placed in is a situation where, my management is not willing to comply with codes and standards and . . . procedures that govern the conduct of engineering . . . when I express a concern about this it is identified as a conflict." Ex. 6 at 21.

⁴ The Individual provided similar testimony at his hearing. Tr. at 41.

⁵ While several of the mental health professionals who have evaluated or treated the Individual have concluded that has suffered from major (or less serious forms of) depressive disorder, the DOE Psychologist did not cite that disorder as one that causes or may cause the Individual to exhibit a significant defect in judgment or reliability. Nor is any mental disorder or condition other than PTSD cited in the Notification Letter.

them argumentative or unreasonable. His learning is cognitive, intellectual-and still needs to become integrated with the emotional and interpersonal aspects. In summary, [the Individual's] therapy with [the Treating Therapist] and medication regimen monitored by [his psychiatrist] are high levels of care which have benefitted him psychologically and emotionally with his PTSD and MDD. In areas of anger management, mistrust, emotional regulation, and interactions with others, [the Individual] continues to have significant problems which affect his perception of people and events, and his judgments in responding.

Ex. 4 at 11. Therefore, the DOE Psychologist concluded that the Individual's PTSD was continuing to cause a defect in his judgement and reliability. Ex. 4 at 12.

V. ANALYSIS

At the hearing, the Individual's attorney presented convincing evidence showing that the Individual's treatment for his PTSD has been sufficiently effective to resolve the concerns that it causes or may cause a defect in his judgment or reliability going forward. The Individual submitted psychological evaluations conducted by his Expert Witness, Ex. D; and treating psychiatrist, Ex. F, which supported this contention. In addition, the Individual's Expert, the Treating Therapist, and the EAP Employee testified on the Individual's behalf at the hearing, each of whom essentially concluded that the Individual's treatment for his PTSD has been sufficiently effective to resolve the concerns that it causes or may cause a defect in his judgment or reliability going forward. The Individual also testified on his own behalf at the hearing. The DOE Psychologist observed the testimony of the Individual and his witnesses and ultimately joined in the conclusion that the Individual's treatment for his PTSD has been sufficiently effective to resolve the concerns that it causes or may cause a defect in his judgment or reliability.

The Individual testified that he had sought treatment when he concluded that the stresses related to his work were affecting his personal life. Tr. at 27. The Individual eventually began receiving treatment from a psychiatrist, who monitors his medications, and the Treating Therapist. Tr. at 32. He believes he has met with the Treating Therapist for between 50 and 100 hours during the past year and a half, and sees her on a weekly basis.⁶ Tr. at 32, 74. The Individual also meets with the EAP Employee, who coaches him in navigating his difficult and stressful work environment and assists him "in identifying alternate and effective methods in attempting to communicate with [his first-line supervisor]." Tr. at 33-34, 46-47. The Individual testified that the traumatic events which led to his PTSD have left him with a particular sensitivity to his supervisor's "woodshedding" management approach. Tr. at 40. The Individual provided examples of his ability to use the coping therapies he had learned in treatment to constructively manage difficult situations which have arisen at work and explained what he has learned from his therapy. Tr. at 70-71, 83, 86-87, 91. Through his therapy, the Individual now accepts that he has PTSD, and understands how it affects him and influences his emotions and perceptions. Tr. at 76, 78-80. He testified that he has experienced improvement in his interpersonal relationships and social life from his therapy. Tr. at 90-92.

⁶ This testimony was corroborated by the Treating Therapist's testimony. Tr. at 167-168.

The EAP Employee, a counselor,⁷ testified on the Individual's behalf at the hearing. The EAP Employee testified that he has received specialized training in counseling individuals with PTSD, and is an accredited member of the International association for Trauma Professionals. Tr. at 96-97. He further testified that he has many years of experience in treating PTSD, and in working for the Individual's employer. Tr. at 99. He testified that he was not the Individual's counselor, and was not providing the Individual with counseling services, but rather, was "coaching him around how to cope with and interface with what was a very hostile type of management in a way that he wouldn't be hopefully set up to be labeled as insubordinate or a disgruntled employee." Tr. at 99. He met with the Individual from six to eight times. Tr. at 100. He noted that the Individual's managers would take the Individual "behind closed doors and become very aggressive, very loud, and it's sort of an in-your-face style of managers," even though they were aware he had PTSD. Tr. at 100. The EAP Employee testified that he coached the Individual to not respond to his managers' provocations and to address them in a non-adversarial manner. Tr. at 101. The EAP Employee testified that he never observed any behavior by the Individual that would give him cause to suspect that he had PTSD, or was bipolar. Tr. at 101. Rather, the EAP Employee felt that the Individual "was quite rational, he was quite collected," and was dealing with a difficult situation "very well." Tr. at 101-102. The EAP employee testified that the Individual responded well to his coaching, had done a good job of applying what he learned, was coping well with a difficult situation, and has an excellent support system. Tr. at 104-106. He testified that he has no concerns about the Individual. Tr. at 103, 106.

The Individual's Expert, a clinical and forensic psychologist, testified on his behalf at the hearing. The Individual's Expert testified that she conducted an evaluation of the Individual, meeting with him on two occasions, administered three standardized psychological tests to him, reviewed the report issued by the DOE Psychologist, and reviewed the results of two psychological tests administered to the Individual by the DOE Psychologist. Tr. at 123, 136-137, 141. She concluded that his prior symptoms of PTSD and Major Depressive Disorder were in "mild remission." Tr. at 120. She testified that the Individual still has some symptoms of PTSD, but "they are kind of subdued, they are kind of settled down right now, they are not interfering with his daily functioning." Tr. at 123. The Individual's Expert testified that that she believed that the Individual's PTSD would not likely affect his judgment or reliability. Tr. at 128. She testified that his personality style was to "follow the rules and do things the right way." Tr. at 129. She noted that the medication that has prescribed for the Individual's depression would also relieve some of the Individual's PTSD symptoms. Tr. at 131. The Individual's Expert testified that she administered three standardized psychological tests to the Individual: The Cognitive Linguistic Quick Test (CLQT), the Personality Assessment Inventory (PAI), and the Trauma Symptom Inventory (TSI). Tr. at 141-142. The CLQT test results indicated that the Individual has no impairment in brain functioning. Tr. at 142. The PAI test results were consistent with the information gained from her interviews of the Individual (from which she determined that the Individual has PTSD which is in mild remission). Tr. at 144-145. The TSI test results indicated that the Individual has a PTSD coefficient of .352, which she characterized as "very low." Tr. at 146, 156, 162. The Individual's Expert testified that the TSI test result is "objective" evidence

⁷ The EAP Employee, while employed as a counselor by the EAP, is not the same EAP counselor who provided counseling services to the Individual.

that indicates that the Individual's PTSD symptoms are in remission. Tr. at 147-148, 156-157, 160. She further testified that while the Individual still has PTSD symptoms, they are now at a much lower level, and he is now in remission. Tr. at 149. She testified that the Individual has benefited from two years of treatment, and medication and that "he's in pretty good shape psychologically now." Tr. at 149-150. She further testified that he is receiving the appropriate treatment and the appropriate intensity of treatment. Tr. at 150-151. Finally she testified that she saw nothing that would indicate that the Individual would not be reliable in the future, and that his prognosis is good that his residual PTSD symptoms will not interfere with his judgment in the future. Tr. at 154, 160.

The Treating Therapist testified at the hearing on the Individual's behalf. She testified that she has worked extensively with survivors of trauma, having treated hundreds of patients with PTSD, since she received her license in 2002. Tr. at 164-165. She testified that, as a result of his therapy, the Individual is now on the low end of the PTSD symptom spectrum. Tr. at 165-166. She testified that she had been treating the Individual since June 19, 2014. Tr. at 171. She testified that the Individual has learned emotional regulation techniques, coping techniques, and has awareness of his symptoms and their triggers. Tr. at 166-167. She has seen the Individual make significant and continuing progress. Tr. at 168-169. She described the Individual as a model patient who is making excellent use of his therapy; he does his homework, does not miss appointments, works hard at his therapy, thinks about it between sessions, and diligently implements what he has learned on a daily basis. Tr. at 168-170, 172, 181. She testified that the Individual's prognosis is good, and indicates continuing improvement, and that the Individual has an extremely low risk of becoming unreliable or exercising poor judgment. Tr. at 169-170, 190-191. She testified that she regularly communicates with the Individual's Psychiatrist in order to coordinate his care. Tr. at 173-174. She testified that she has great confidence that if the Individual were to encounter a difficult situation, such as being subject to "woodshedding," he would be able to handle it effectively without escalating the situation. Tr. at 180. She testified that the Individual has not been experiencing many symptoms recently, and that he is getting better at handling his symptoms. Tr. at 180, 185. She testified that if he were to experience symptoms again, she feels very strongly that he has new tools and skills that would allow him to handle them appropriately. Tr. at 189.

The DOE Psychologist observed the other witnesses' testimony prior to providing her own testimony. She testified that the Individual's progress in therapy has been substantial enough that it is unlikely that the Individual would exhibit a defect in his judgment or reliability. Tr. at 196, 199. She further testified that the Individual has been receiving excellent care and has made excellent progress. Tr. at 197-198.

Adjudicative Guideline I sets forth five conditions that could mitigate security concerns. Adjudicative Guideline I at ¶ 29, which include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; ... [and]

(e) there is no indication of a current problem.

Adjudicative Guideline I at ¶ 29. As the discussion above elaborates, it is clear from the record that four of these five mitigating conditions are unambiguously present in this case. Accordingly, I find that the security concerns raised under Criterion H have been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion H. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated the Criterion H security concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: January 29, 2016