

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: February 28, 2012)
) Case No.: PSH-12-0016
)
)
_____)

Issued: June 12, 2012

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXXX XXXX (hereinafter referred to as “the Individual”) to maintain a security clearance 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, I have determined that the Individual’s security clearance should not be restored.

I. BACKGROUND

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the Local Security Office (LSO) stated that the Individual had: (1) been diagnosed by a psychologist as suffering from Impulse-Control Disorder, an illness or mental condition of a nature which causes, or may cause, a significant defect in judgment or reliability; and (2) engaged in unusual conduct which brought his honesty, trustworthiness, and reliability into question by viewing pornography at work, providing false information to investigators, and inappropriately charging time spent viewing pornography to his employer.¹

¹ *See*, 10 C.F.R. § 710.8(h) and (l).

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on June 1, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse, his supervisor, his Employee Assistance Program (EAP) Counselor (the Counselor), his prayer partner, his treating Counselor (the Treating Counselor) and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0016 (hereinafter cited as "Tr."). The LSO submitted 8 exhibits, marked as Exhibits 1 through 8, while the Individual submitted 3 exhibits, marked as Exhibit A through C.

II. FINDINGS OF FACT

The present proceeding involves an Individual who was caught viewing pornography by a security monitor at a desktop computer in his cubical at a secure DOE facility in August 2011. Exhibit 3 at 1. When questioned by his employer about his viewing of pornography at work, during work hours, the Individual initially claimed that he had inadvertently stumbled upon a sexually explicit web site.² Exhibit 8 at 28. The Individual subsequently admitted that he had been purposely viewing pornography during working hours for an estimated 30 to 40 hours from February 2011 to August 2011. Exhibit 8 at 11, 30. The Individual further admitted that he had been billing time for work when, in fact, he had been viewing pornography. *Id.*

On November 30, 2011, the LSO conducted a Personnel Security Interview (PSI) of the Individual.³ During this PSI, the Individual admitted that he had been having a problem with pornography for four years. Exhibit 8 at 13. The Individual acknowledged that he had felt compelled to view pornography while at work. *Id.* at 25.

At the request of the LSO, the Individual was evaluated by the Psychologist on January 6, 2012. The Psychologist issued a report of his evaluation on January 7, 2012.⁴ The Psychologist found that the Individual suffers from a sexual addiction and meets the criteria for Impulse-Control Disorder NOS set forth in the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition, Text Revision (DSM-IV-TR). Exhibit 6 at 4-5. The Psychologist opined that the Individual's Impulse-Control Disorder is a mental condition that could significantly affect his judgment or reliability. *Id.* at 5. The Psychologist further found that the Individual did not show adequate evidence of rehabilitation or reformation from his Impulse-Control disorder, noting that, at the time of the Individual's examination, the Individual had only abstained from viewing pornography for four months. *Id.* at 5. The Psychologist recommended that in order to establish reformation or rehabilitation, the Individual needed to abstain from viewing

² The Individual subsequently admitted that he had attempted to deceive his employer about his intent to view pornography because he was concerned about losing his job. Exhibit 8 at 29.

³ A copy of the transcript of the November 30, 2011, PSI appears in the record as Exhibit 8.

⁴ A copy of the January 7, 2012, Psychologist's report appears in the record as Exhibit 6.

pornography for at least one year, and attend one-on-one counseling on a weekly basis for a period of at least several months. *Id.*

III. STANDARD OF REVIEW

The Hearing Officer'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 or 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). I have considered the following factors in rendering this opinion: 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. ANALYSIS

The LSO has invoked Criterion H citing the Psychologist's opinion that the Individual met the DSM-IV criteria for Impulse-Control Disorder NOS, and has not shown reformation or rehabilitation. It is well settled that such emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines)* at ¶ 27. The LSO has also invoked Criterion L, since the Individual's sexual addiction caused him to engage in professionally inappropriate conduct (i.e. viewing pornography in his work cubical), act in a dishonest manner (by attempting to deceive his employer), and to violate his employer's ethical guidelines (by indicating on his time sheet that he was performing chargeable work, when he was actually viewing pornography).

The Adjudicative Guidelines provide in pertinent part: “Sexual behavior that . . . indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” *Adjudicative Guidelines* at ¶ 12. The Adjudicative Guidelines specifically state that “a pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop . . .”; “sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;” and “sexual behavior of a public nature and/or that which reflects lack of discretion or judgment,” are among those “conditions that could raise a security concern and may be disqualifying.” *Id.* at ¶ 13. It is similarly well settled that “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can

raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” *Id.* at ¶ 14.

In the present case, I find that the Individual’s viewing of pornography at his work cubicle and his ensuing dishonest conduct are symptomatic of his Impulse-Control disorder. Tr. at 138. Accordingly, the sole question before me is whether the Individual has been sufficiently reformed or rehabilitated from his Impulse-Control disorder to resolve the security concerns raised by the derogatory information discussed above.

The Individual candidly admits that he suffers from a sexual addiction to pornography and that he was properly diagnosed with Impulse-Control Disorder NOS. The Individual has testified that he has not viewed pornography since August 2011 (approximately nine months prior to the hearing), obtained counseling from the Treating Counselor, and has been working with a pastor at his church in order to address his sexual addiction.⁵

At the hearing, the Treating Counselor, a licensed professional clinical counselor, testified on the Individual’s behalf. Tr. at 41. The Treating Counselor testified that she had first met with the Individual on February 16, 2012, less than three months prior to the hearing. *Id.* at 43. She has been seeing him on a bi-weekly basis since February, for a total of six or seven sessions. *Id.* at 43, 55. The Treating Counselor agreed that the Individual was properly diagnosed with Impulse-Control Disorder NOS. *Id.* at 45, 48. She further testified that an Impulse-Control disorder has an effect upon an individual’s cognitive function and judgment. *Id.* at 45-46. The Treating Counselor admitted that she did not have any scientific basis upon which to judge the Individual’s likelihood of relapse, but believed that the consequences suffered by the Individual as a result of his condition were sufficiently painful to prevent a relapse. *Id.* at 56-57. She noted that the Individual is “fully involved” and “participative” in his therapy process, and has really worked hard. *Id.* at 62-63. She testified that the Individual now has a sense of control over his urges. *Id.* at 52. The Treating Counselor described the Individual’s prognosis as “very positive.” *Id.* at 62. However, the Treating Counselor admitted that the Individual needs approximately a year’s treatment for his condition to “stabilize,” *i.e.* until February 2013. *Id.* at 55-56.

The Psychologist was present for the testimony of each of the other witnesses during the hearing. After the other witnesses had concluded their testimony, the Psychologist testified. The Psychologist testified that he diagnosed the Individual with Impulse-Control Disorder NOS after concluding that the Individual has a sexual addiction. Tr. at 133. The Psychologist explained that the Impulse-Control Disorder NOS is a broad category covering a number of situations in which a “person has a difficulty restraining themselves from acting on particular impulses that does not fit any other psychological condition.” *Id.* at 134. A sexual addiction is among those situations. *Id.* The Psychologist described the Individual’s sexual addiction as “extremely strong” and noted that sexual addictions are among the hardest to treat. *Id.* at 137, 141. The

⁵ In addition, the Individual is being monitored on a tri-weekly basis by a licensed professional clinical counselor through his EAP. The EAP Counselor testified at the hearing that she meets with the Individual primarily for the purpose of monitoring the progress of his therapy. Tr. at 12. She testified that she is not treating the Individual’s Impulse-Control disorder. *Id.* at 12-13, 19. Instead, she referred the Individual to the treating counselor for treatment of his Impulse-Control disorder because she believed the treating counselor to be more experienced in treating Impulse-Control disorders. *Id.* at 11-12, 18. The EAP Counselor testified that the Individual appeared to be making progress in his therapy. *Id.* at 16.

Psychologist testified that the Individual has not: (1) abstained from using pornography for a full year, (2) received weekly counseling, or (3) addressed, in his therapy, the underlying issues which lead to his sexual addiction. *Id.* at 140. Moreover, the Psychologist opined that the therapy the Individual was receiving was inadequate because it was not addressing the underlying causes of the Individual's behavior. *Id.* at 143-146. The Psychologist further testified that the Individual is: "a moral man with . . . holes in his conscience, that can allow him to behave in ways that he basically doesn't like, but he still allows himself to do and that is counter to his own values. And one of those ways, apart from the pornography, is to lie, to hold things in private that he's ashamed of." *Id.* at 138. The Psychologist testified that the Individual would, at a minimum, need to abstain from using pornography for at least a full year to be considered reformed or rehabilitated, but he would need to abstain from using pornography for at least two years before "we can be fairly highly confident that he may have conquered this problem." *Id.* at 147-149. Since the Individual has only abstained from using pornography for ten months, he has not yet shown that he is reformed or rehabilitated from his Impulse-Control Disorder NOS.

I find that the Psychologist has convincingly testified that the Individual has not yet been sufficiently reformed or rehabilitated from his Impulse-Control Disorder. The Psychologist's testimony is supported by the Treating Counselor's testimony that the Individual would need a year of treatment before he was stabilized (and therefore would not be stabilized until February 2013). Based on all the evidence before me, I find that the Individual has not resolved the security concerns arising from his Impulse-Control Disorder and its associated behaviors. Accordingly, I find that the Individual has not mitigated the security concerns raised under Criterion H and L.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and L. I find that unmitigated security concerns remain under both of these criteria. Accordingly, the Individual has not 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 not be restored. The Individual 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
Hearing Officer
Office of Hearings and Appeals

Date: June 12, 2012