

information during his March 2012 psychological assessment that indicates that he previously had provided inaccurate information to the DOE concerning his criminal record and his use of prescription drugs. These findings raise security concerns under the provisions of 10 C.F.R. Section 710.8(f).

The LSO also finds that the DOE-consultant Psychologist has concluded that the individual meets the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition, TR criteria for antisocial tendencies, and that this mental condition is likely to cause serious defects in his judgment and reliability, thereby raising a security concern under the provisions of 10 C.F.R. Section 710.8(h). Finally, the LSO finds that the individual's history of legal infractions raises concerns about his honesty, reliability and trustworthiness, which is a security concern under 10 C.F.R. Section 710.8(i).

In April 2012, the individual responded to the concerns raised in the Notification Letter and requested a hearing (hereinafter "the hearing"). See Individual's Response, DOE Exhibit 2. On May 9, 2012, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in June 2012, I received testimony from six persons. The DOE presented the testimony of the DOE-consultant Psychologist. The individual testified and presented the testimony of his mother, his father, a security guard/friend at the facility where he works, and his best friend's mother. Discussion at the hearing centered on the incidents in the individual's life that formed the basis for the LSO's Criteria H and L concerns, as well as the individual's explanations for the allegedly false responses made on his QNSP and at his PSI.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of 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).

III. ANALYSIS AND FINDINGS

A. Criterion H Concerns

1. The DOE-consultant Psychologist correctly found that the Individual has Antisocial Tendencies

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual has been properly diagnosed or assessed with a mental condition. *See* 10 C.F.R. § 710.27. Hearing Officers properly give deference to the expert opinions of psychiatrists and other mental health professionals regarding these diagnoses. *See, e.g., Personnel Security Hearing, Case No. TSO-0401 (2006)*. As noted above, in his Report, the DOE-consultant Psychologist concluded that the individual has antisocial tendencies, a mental condition that is likely to cause serious defects in the individual's judgment and reliability.¹ At the hearing, the individual testified that he disagreed that he had anti-social tendencies, asserting that the DOE-consultant Psychologist made his finding based on the limited information before him, but if he knew the individual better he would not have reached that conclusion. TR at 128. In his Response to the Notification Letter and in his hearing testimony, the individual described the incidents cited in the Report, and provided explanations and evidence aimed at showing that in many instances he was not a participant in alleged wrongdoing or that he was responding to threatening behavior by others, or that his legal infractions were unintentional. He acknowledged responsibility for other incidents or wrongdoing, expressed regret for his actions, and provided witness testimony supporting his honesty and good character. In cases like this one, where there is a disagreement concerning the finding of a mental condition, the DOE Hearing Officer must make a determination based on the available evidence. As discussed below, I find that while the individual has provided some exculpatory evidence, the DOE-consultant Psychologist's findings should be upheld.

As support for his finding of antisocial tendencies, the DOE-consultant Psychologist refers in his Report to the individual's police record as a child, citing the individual's involvement in a 1997 incident where a neighbor's car was damaged, and a 2001 incident where the individual and several other youths were reportedly observed throwing furniture into a swimming pool. Report at 3-4. At the Psychological Assessment, the individual acknowledged that at about the age of 13, he began to become easily and intensely angry, and that his police record continued as a juvenile. In 2003, the individual was arrested for battery when he allegedly became angry with his mother, grabbed her arms, kicked the refrigerator, and punched the walls. In 2004, he was cited for underage drinking, and later that year, he was cited for being verbally abusive to a police officer who had ordered him to kneel during a police action. In 2006, the individual was cited for Domestic Violence after his aunt and parents witnessed him

¹ At the hearing, the DOE-consultant Psychologist explained that his finding of antisocial tendencies is not a DSM-IV TR diagnosis, but is an appraisal of problem personality characteristics based on DSM-IV TR standards. Hearing Transcript (TR) at 169-170.

threatening his older brother with a baseball bat and called the police. *Id.* at 4-5. The DOE-consultant Psychologist also finds that as a juvenile and an adult, the individual has had several tickets for speeding, and at age 19 was cited for causing an accident and for leaving the scene of an accident. In 2010, when the individual was in his early 20's, he was arrested for shoplifting video games. *Id.* at 5-6.

In addition to the individual's police record, the DOE-consultant Psychologist finds that the individual has been evasive and dishonest in explaining these incidents to the DOE. With respect to the 2004 incident of verbal abuse to a police officer, the DOE-consultant Psychologist notes that the individual told him that he omitted describing his verbal abuse in this incident at the PSI because he did not know that the interviewer knew about the verbal abuse. *Id.* at 5. With respect to his 2010 theft of video games, the police record indicates that the individual initially told police that he stole the games so that he could make money by selling them. However, the individual told the OPM investigator that he stole the games because he was angry that the store would not allow him to exchange a defective video game cartridge without a receipt, and, at the PSI, he stated that he was angry with the store because the game cartridge was missing from a video game that he purchased. When asked about these stories at his Psychological Assessment, the individual admitted that he took the video games in order to sell them, and that he made up the stories about purchasing a defective video game because he was ashamed of his action and wanted to make himself "look better." *Id.* at 6.

The DOE-consultant Psychologist concluded that although the individual did not manifest the core feature of an Antisocial Personality Disorder, which is a pervasive disregard for others, his long history of legal infractions and his tendency to misrepresent the facts indicated that the individual has antisocial tendencies that will likely continue to cause serious defects in his judgment and reliability. The DOE-consultant Psychologist also noted in his Report that the individual had a high score for Antisocial Behavior when he was tested with the Minnesota Multiphasic Personality Inventory-2 Restructured Form (MMPI-2-RF) personality test.² The DOE-consultant Psychologist further noted that he believed that the individual's "willful violations of societal norms are in the past, but that his misrepresentations of their truth are in the present." *Id.* at 8.

The DOE-consultant Psychologist's finding of antisocial tendencies in his Report appears reasonable based on the individual's record of legal problems and responses made during his Psychological Assessment. With one exception, I find that the evidence presented by the individual at the hearing does not refute the factual bases for this finding. In that instance, the individual's mother testified that she was present during the 2006 incident when the individual wielded a baseball bat against his brother. She confirmed the individual's account that he raised the bat only as a defensive gesture against his brother, who is bi-polar and has a history of violent behavior towards him. TR at 28-29, Individual's Response at 5, TR at 163. However, with regard to the other incidents where the individual denied culpability, the only evidence is testimony from his parents that they believe him. For example, the individual asserted that older children were

² At the hearing, the DOE-consultant Psychologist stated that only about one percent of males who take the MMPI-2-RF score as high as the individual did for Antisocial Behavior. TR at 179.

responsible for the property damage in the 1997 and 2001 incidents. TR at 158-159. His parents did not witness this incident, and his father could only testify that the police officer who responded to the 2001 incident told him that he tended to believe the individual's explanation that he was not involved in the vandalism. TR at 105-106.

The individual's mother also testified that she accepted the individual's account that he verbally abused a police officer in 2004 because he was being treated roughly for no reason by the officer. TR at 30. She asserted that the individual is basically honest, trustworthy and deserving of a security clearance. TR at 46-47. The individual's father testified that the individual can be trusted, and that most of the individual's police record consists of minor infractions. TR at 82-84. The mother of the individual's best friend testified that the individual has been a good friend to her son since they were 13, and that he has been loyal and devoted to her son, who has serious medical problems. She also believes that the individual is trustworthy and responsible, and that he deserves a security clearance. TR at 54-59.

I find these generalized assertions of trustworthiness by the individual's witnesses insufficient to outweigh the individual's series of police incidents and admitted false statements. Indeed, the individual's mother confirmed that during an argument with the individual in 2003, she called the police because she was concerned that the individual was imitating his older brother's threatening behavior, and she wanted to stop it. TR at 24-25. The individual acknowledged his threatening behavior towards his mother during this incident. TR at 156-157. He also admitted to other illegal behavior that supports the DOE-consultant Psychologist's finding. He confirmed that he has received several tickets for speeding, although he asserted that his violations of the speed limit were relatively minor, and that he speeds unintentionally when he is in a hurry. TR at 146, 153. He admitted that he collided with another car when he was 19 because he was texting while driving. TR at 146. With respect to his 2010 arrest for theft, he confirmed that he committed theft, and he admitted that he provided the OPM and DOE with conflicting explanations for the theft out of embarrassment. TR at 123-127.

Based on the documentary evidence and testimony in this proceeding, I conclude that the DOE-consultant Psychologist appropriately found that the individual's police record and his instances of omitting or minimizing his wrongdoing to the DOE indicate that the individual has antisocial tendencies. This finding of antisocial tendencies raises a Criterion H security concern because it clearly is a mental condition that can "impair judgment, reliability, and trustworthiness." Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Assistant to the President for National Security Affairs (December 29, 2005) (*Adjudicative Guidelines*), Guideline I.

2. The Individual has not Mitigated his Antisocial Tendencies

I find that the individual's recent behavior has not mitigated the concerns arising from the DOE-consultant Psychologist's finding in his Report. At the hearing, the individual asserted that his previous omissions and minimizations of negative information were

caused by his inexperience with the security clearance process and by his embarrassment, and that he is now being honest and trustworthy with the DOE concerning his police record. TR at 9-10, 194-195. The individual's father testified that he accepts the individual's explanation that he did not deliberately omit information from his QNSP, and that his son now understands the importance of providing full information to the LSO. TR at 82-84. The security guard/friend testified that he has known the individual for several months, and that the individual is truthful and honest, does his job very well, and has raised no security problems in the workplace since the individual was hired in 2011. TR at 65, 69-70. He also stated that the individual is even tempered, not impulsive, and drives only about three miles over the speed limit. TR at 72-73.

After listening to this testimony, the DOE-consultant Psychologist stated that he believed that the individual continues to exhibit anti-social tendencies, and that this sort of characterological behavior is not readily changed. He stated that the individual is working his way toward being more honest, but that he is not there. TR at 170-173. He asserted that at the hearing, the individual continued to misrepresent facts when he testified that he voluntarily came forward and set the record straight concerning his false explanations for the 2010 theft. The DOE-consultant Psychologist asserted that the individual only told the truth concerning his motive for stealing the video games after he was confronted with the conflicting explanations that he had provided to OPM and the LSO. TR at 175-176. He also stated that the individual's failure at the PSI to describe his angry and abusive behavior toward a police officer in 2004 was not just a failure to provide details but a misrepresentation of the incident. TR at 177-179. He opined that the individual can redefine in his mind what he is being asked so that he can deny receiving a speeding ticket because that ticket was later dismissed. The DOE-consultant Psychologist concluded that the individual cannot be trusted to tell the truth in a crisis. He stated that the individual's tendency to normalize his bad behavior, (*i.e.*, a lot of people get speeding tickets), is another indication that he cannot yet be trusted to be completely truthful with the DOE. TR at 180-181. He testified that the individual eventually should become more reliable as his personality matures, but that his reliability will be difficult to assess because his explanations are persuasive, and because he only lies in situations where he is trying to avoid bad consequences from his actions. TR at 181-182, 191-192.

The DOE-consultant Psychologist convinced me that the individual has not yet demonstrated that he will come forward and report negative information to the DOE in an honest and straightforward manner. Accordingly, I find that the individual has a current problem with antisocial tendencies, and has not mitigated the Criterion H security concern raised by the DOE-consultant Psychologist's finding. *See Adjudicative Guidelines*, Guideline I(e).

B. The Criteria F and L Concerns

With respect to Criterion F, the Summary of Security Concerns indicates that the individual may have deliberately falsified certain responses on his QNSP concerning past medical treatment and his police record, and that information that he provided at his

Psychological Assessment indicates that he previously provided inaccurate information at his PSI concerning his police record and his use of prescription drugs. DOE Ex. 1. In his Response and in his testimony at the hearing, the individual asserted that aside from his account of his 2010 arrest for theft, he did not intentionally falsify any of his responses on the QNSP or at the PSI. He explained that in certain instances he misinterpreted the question to exclude the relevant information, erroneously recalled the incident as having occurred outside the timeframe of the question, or erroneously interpreted questions to have limited time frames when they did not. With respect to his omissions and misstatements at the PSI, he asserted that he omitted information because he did not understand the importance of providing detailed responses, and that he simply did not accurately recall the details of his prescription drug usage. Response at 2-1, TR at 114-128.

After reviewing these responses, I find that the individual has resolved a single instance of alleged falsification for failing to report a criminal charge. *See* Summary of Concerns, Paragraph 1(b). As discussed above, he has established that he did not assault his brother with a baseball bat in 2006, and the police report of that incident indicates that the individual's brother was the sole person arrested and charged. *See* DOE Counsel's June 21, 2012 email attaching OPM copy of individual's police record. I therefore conclude that the individual was not required to identify this incident on his QNSP. However, I cannot accept the individual's other explanations. In light of the DOE-consultant Psychologist's finding of antisocial tendencies that affect the individual's honesty and the individual's admitted falsifications in his accounts of his 2010 arrest for theft, I am not convinced by the individual's assertions that he did not deliberately omit or misrepresent other relevant information on his QNSP and at his PSI. Moreover, I find the individual to be an intelligent and articulate young man. It therefore strains credulity for me to accept the individual's explanation that he could not understand the plain meaning of a question, or that he provided incomplete or misleading information due to confusion or poor memory. As discussed above, the individual has not shown that these omissions and misrepresentations were isolated in nature or unlikely to recur, or that he made voluntary efforts to correct them. *See Adjudicative Guidelines*, Guideline E(17). Accordingly, I find that the individual has failed to resolve the LSO's Criterion F concerns.

Finally, I find that the individual's legal record raises Criterion L concerns about his honesty, reliability and trustworthiness that have not been resolved. Aside from the 2006 incident resulting in the arrest of his brother, the individual has not shown that the fourteen citations and charges listed in Section III of the Summary of Concerns are inaccurate. The most recent of these citations occurred in September 2011, less than ten months prior to the hearing, and his arrest for theft occurred less than two years prior to the hearing. The individual's apparent willingness to conform to legal requirements in recent months is a positive development. However, I find that in light of his extensive record of infractions and his ongoing problem with personal honesty, the individual has not yet shown that his past behavior is unlikely to recur. *See Adjudicative Guidelines*, Guideline J(32).

IV. CONCLUSION

For the reasons set forth above, I find that the individual was properly found to have antisocial tendencies, a mental condition that is subject to Criterion H. Further, I find that this derogatory information under Criterion H has not been mitigated sufficiently at this time. I further find that the individual has not mitigated all of the DOE's Criteria F and L concerns. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: July 27, 2012