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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: July 25, 2012) Case No.: PSH-12-0096
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Issued: December 13, 2012

Decision and Order

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as the Individual) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} After carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's access authorization should not be restored.

I. Background

The Individual has held a Department of Energy (DOE) security clearance for 23 years. Based upon the receipt of derogatory information relating to the Individual's misuse of technology,^{2/} the Local Security Office (LSO) called the Individual in for a Personnel Security Interview (PSI). DOE Ex. 7. After the PSI, the LSO sent the Individual to a DOE consulting psychologist (DOE psychologist) for an evaluation. Following its receipt of the DOE psychologist's report, the LSO informed the Individual that derogatory information created a substantial doubt

^{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/} The Individual disagreed with the characterization of her offense as a "misuse of technology," claiming she does not have the knowledge necessary to misuse technology. Tr. at 14. In this case, the Individual used her supervisor's password to access information she was not authorized to access on the Human Resources database. For ease of reference, I have referred to this as "misuse of technology."

concerning her eligibility for an access authorization. Notification Letter dated June 15, 2012; DOE Ex. 1. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (hereinafter referred to as Criterion H and Criterion L).^{3/} DOE Ex. 1 at 1-2.

The Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization. The Individual requested a hearing on this matter, and I was appointed the Hearing Officer. I conducted a hearing within the required regulatory time frame. At the hearing, the DOE introduced eight exhibits into the record of this proceeding and presented the testimony of the DOE psychologist. The Individual submitted seven exhibits and presented the testimony of three witnesses, in addition to testifying herself.

II. Regulatory Standards

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 at the hearing 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). Hence, an individual is

^{3/} Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion L concerns information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, ... or a violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8 (l).

afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable. Such a decision must consider whether granting or restoring 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 cites two criteria as the bases for denying the Individual's security clearance, Criteria H and L. To support the Criterion H allegations, the LSO relies on the DOE psychologist's diagnosis that the Individual meets the criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR)* for Narcissistic Personality Disorder (hereafter referred to NPD). DOE Ex. 1. The DOE psychologist opined that NPD is an illness or mental condition which causes or may cause a significant defect in judgment or reliability. DOE Ex. 6. 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) states that a condition that could raise a security concern is the opinion by the DOE psychologist that "the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness." Adjudicative Guidelines ¶ 28(b). Accordingly, based on the derogatory information listed above, I find that the LSO properly raised security concerns under Criterion H.

To support the Criterion L allegations, the LSO relies on the Individual's admission that she improperly used her supervisor's password to access the human resources (hereinafter referred to as HR) database to review the personnel files of co-workers. DOE Ex. 1. Guideline E of the Adjudicative Guidelines states that information that shows "a pattern of dishonesty or rule violations" is sufficient to raise a security concern. Adjudicative Guidelines ¶ 16(d)(3). Accordingly, based on the derogatory information listed above, I find that the LSO properly raised security concerns under Criterion L.

IV. Findings of Fact

Beginning in 2006 and continuing for the next six years, the Individual accessed the HR database and reviewed the personnel files of co-workers. Tr. at 218; DOE Ex. 7 at 45. Such unauthorized review of the personnel files violated the rules and regulations of her employer. DOE Ex. 7 at 31-32. In addition, the Individual acknowledged that she knew she was wrong to access the files and violated the memorandum in place allowing her to use her supervisor's password for other,

legitimate purposes. Tr. at 219, 223, 228; DOE Ex. 7 at 31. She could not estimate the number of times she inappropriately accessed the HR database. Tr. at 218. The Individual accessed the information because she was curious about co-workers' promotions. Tr. at 239.

Because of the Individual's conduct and some recent mental health treatment that came to the attention of the LSO, the LSO referred the Individual in May 2012 for a forensic psychological evaluation. DOE Ex. 6. Prior to meeting with the Individual, the DOE psychologist reviewed her Personnel Security File, which included the PSI where the Individual explained her medical and psychological history. DOE Ex. 6. Of note is information that the Individual's psychiatrist took her off Percocet and prescribed Suboxone to wean her off the Percocet.^{4/} DOE Ex. 7 at 8-9, 51, 63; Tr. at 34. After his evaluation, the DOE psychologist diagnosed the Individual as suffering from NPD and an Adjustment Disorder with Mixed Anxiety and Depressed Mood.^{5/} DOE Ex. 6. To support the NPD diagnosis, the DOE psychologist found that the Individual readily praised herself, diminished those individuals she deemed were a threat to her, and admired those who supported her. DOE Ex. 6 at 8. The DOE psychologist noted as a further example of the Individual's personality disorder that she expected him to know who her father was and what he did. DOE Ex. 6 at 8; Tr. at 62-63. Finally, the fact that the Individual feels anxiety about being caught in the misuse of technology supports the NPD diagnosis. Tr. at 139.

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)^{6/} and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should not be restored. I cannot find that restoring the Individual's DOE security clearance will not endanger the

^{4/} At the hearing, the Individual's psychiatrist testified that the Individual was opiate dependent. Tr. at 20-21, 42. It is unclear from the record whether the LSO was aware of the Individual's opiate dependence prior to the hearing. The DOE psychologist's report alludes to the fact that her psychiatrist "took her off Percocet several weeks" prior to their interview. DOE Ex. 6 at 6. In addition, the DOE psychologist's report indicates that the Individual was on Suboxone at the time of their interview. DOE Ex. 6 at 6. Also unclear is whether she was still on Suboxone at the time of the hearing. Suboxone therapy can raise security concerns, but because the LSO did not raise them, I made no finding here.

^{5/} The psychologist also diagnosed the Individual as suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood, but he did not find that the mental condition caused a significant defect in judgment or reliability. DOE Ex. 6.

^{6/} 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; 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.

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.

A. Criterion H

1. Whether the Individual Suffers from Narcissistic Personality Disorder

At the hearing, the DOE psychologist explained the bases of his NPD diagnosis. He testified that he based his diagnosis on a 10-hour evaluation of the Individual's personnel file, along with the two and a quarter hour interview. Tr. at 130. He asserted that he did not do any testing because "her diagnosis was so clear, he didn't need them." Tr. at 142. He also stated that he has written two papers on narcissistic behavior. Tr. at 125-26, DOE Ex. 6. The DOE psychologist stated that the Individual's tendency to gravitate to people of importance and make others aware that she was associated with them was a determining factor. DOE Ex. 6 at 8; Tr. at 130-40. The Individual's reaction to her misuse of technology as not hurting anyone, and thereby, not acknowledging that she had betrayed her supervisor's faith in her abilities, was another factor supporting his diagnosis. DOE Ex. 6 at 8-9; Tr. at 137-39. The DOE psychologist stated that a forewarning of her NPD could be seen in her early drug use. Tr. at 140, 191. He stated that her continued drug use after being suspended from school showed a disrespect for the rules. Tr. at 140. He perceived her continued drug use as a disregard of societal norms that became a major part of the diagnosis. Tr. at 191.

The Individual's psychiatrist stated that he has met with the Individual 10 times since January 2012 for approximately 25 minutes each time. Tr. at 20-21, 42. He is working with her on stress management and treating her for opiate dependence.^{7/} Tr. at 20-21, 42. About her opiate dependence, the Individual's psychiatrist testified, "I felt she was dependent but not addicted -- I did not see her as an addict in any way -- to the opiate medicine."^{8/} Tr. at 22. He testified that he disagreed with the diagnosis of the DOE psychologist. Tr. at 29, 66. He claimed that a personality disorder could arise if someone was in a stressful situation. Tr. at 24, 25. He was surprised by the fact that the DOE psychologist did not conduct any testing prior to his diagnosis. Tr. at 23. In addition, he opined that no doctor would diagnose NPD after only one meeting. Tr. at 24-25.

^{7/} The LSO did not raise either a Criterion K concern or a Criterion H concern relating to the Individual's opiate dependence. Therefore, I made no findings on this matter.

^{8/} Section 1072 of the National Defense Authorization Act for Fiscal Year 2008 is also known as the Bond Amendment. The Bond Amendment provides that "the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 802(1) of title 21)." 50 U.S.C. § 435c(b) (2009). Section 802(1) of title 21 defines "addict" as "any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction." 21 U.S.C. § 802 (2010). The Bond Amendment does not appear to be at issue here because the Individual's psychiatrist testified that she is not addicted to Percocet. Tr. at 22.

There is a difference of opinion between the two experts as to whether the Individual actually suffers from NPD. The DOE psychologist, whose aim is to present a forensic psychological evaluation, opined that she does suffer from the disorder. The DOE psychologist has expertise in the area of NPD, having written papers on the subject. The Individual's psychiatrist, whose primary purpose is treating the Individual to facilitate her elimination of opiate medication, disagreed with the DOE psychologist's opinion. The Individual's psychiatric treatment has been focused on her opiate dependence and stress management. I was more persuaded by the testimony of the DOE psychologist who has specific expertise in NPD, than I was by the Individual's treating psychiatrist. For this reason, I find that the Individual does suffer from NPD.^{9/}

2. Rehabilitation from Diagnosis of Narcissistic Personality Disorder

The only evidence of mitigation was provided by the Individual's sister who described the Individual as a caring sister and aunt. Tr. at 70. And the Individual's husband testified that she is the "best wife ever," and a nice person, dedicated, deferential, and helpful. Tr. at 89-90.

The DOE psychologist listened to all of the testimony at the hearing and testified that there was no evidence of reformation or rehabilitation from the NPD diagnosis in this case. Tr. at 144. He opined a person with a NPD diagnosis could be rehabilitated or reformed, but the first step toward that end is admitting the condition and receiving appropriate therapy, such as meeting with a therapist frequently. Tr. at 189. Since the Individual has not even acknowledged that she suffers from NPD, the DOE psychologist does not find her to be rehabilitated from that condition.

3. Hearing Officer Evaluation of the Evidence

The Adjudicative Guidelines suggest possible conditions which are relevant to the Individual's situation to mitigate the DOE's security concerns:

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

^{9/} The Individual disagreed with the DOE psychologist's interpretation of the factors upon which he based his NPD diagnosis. Tr. at 195, 205, 214. She testified that the philosophy at her workplace is self enhancement. Tr. at 195. Her husband confirmed that "pride in self" is the way things that are done at her employer. Tr. at 96. They both asserted that her statements during the PSI and to the DOE psychologist were exaggerated by the DOE psychologist because he was unaware of that attitude. Tr. at 96, 195. She testified that there was so much negative information being spoken about her that she was trying to give the DOE psychologist a complete picture of her by praising herself. Tr. at 195. She claimed that she has no need to associate with high-level people. Tr. at 205. In addition, the Individual claimed that that DOE psychologist took a comment that she made during the evaluation regarding her father incorrectly. Tr. at 205. I find that the lay opinions of the Individual and her husband do not outweigh the opinion of the DOE psychologist in this case.

- 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;
- the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability.

Adjudicative Guidelines ¶ 29(a), (b), (d). As I find below, the Individual has not met her burden to establish any of the mitigating factors.

Although this disorder is controllable with treatment, the Individual has not accepted the diagnosis and therefore, has not undergone any treatment. She has not entered into counseling for the personality disorder. These are factors that the DOE psychologist weighed heavily in finding that the Individual was not rehabilitated. Since the Individual has not admitted to the condition and is not receiving therapy, I find no mitigation of the security concerns at issue here under paragraphs 29(a) or (b) of the Adjudicative Guidelines.

In addition, the Individual's diagnosis of NPD is not a temporary condition resulting from a triggering event. Therefore, she could not mitigate the concern under paragraph 29 (d).

For the reason set forth above, I find that the Individual has not mitigated the security concerns raised by the LSO under Criterion H.

B. Criterion L

The Individual and her husband both testified that she is very regretful about using her supervisor's password to access other individual's personnel files. Tr. at 112-13, 199. Her husband stated that she "beats herself up over it." Tr. at 114, 116. The Individual admitted that she knew accessing the HR database was against her employer's policies. Tr. at 228. She asserted that she didn't hurt anyone, nor did she share the information with anyone. Tr. at 197.

The Adjudicative Guidelines suggest possible conditions which are relevant to the Individual's situation to mitigate the DOE's security concerns:

- the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

Adjudicative Guidelines, ¶ 17(a), (c), (d). In this case, the Individual did not admit to her unauthorized use of her supervisor's password to access co-worker's personnel information until confronted with the allegation. As a result, I find no mitigation of the security concerns at issue here under paragraph 17(a) of the Adjudicative Guidelines.

In addition, I do not find that the conduct was minor. Further, her behavior was ongoing over a period of six years. She could not estimate how many times she accessed the information improperly. She stated that she only accessed the information because she was curious. Regardless, the duration and nature of her conduct is troubling. As a result, I find no mitigation of the security concerns at issue here under paragraph 17(c) of the Adjudicative Guidelines.

Finally, the Individual has acknowledged the rules violation, and she is no longer in the position that would allow her to access the information. However, she has not convinced me that given the opportunity, she would not engage in similar behavior again. The Individual did not acknowledge the behavior until confronted. She attempted to justify her behavior by claiming that she did not share the accessed information with anyone nor did she harm anyone. She and her husband also stated that she is upset by her behavior. However, I am not convinced that she is not more upset by the fact that she was caught than by her actual behavior. As a result, I find no mitigation of the security concerns at issue here under paragraph 17(d).

For the reason set forth above, I find that the Individual has not mitigated the security concerns raised by the LSO under Criterion L.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria H and L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve those concerns. Therefore, I cannot conclude that restoring the Individual's 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(a). Consequently, it is my decision 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. 10 C.F.R. § 710.28.

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: December 13, 2012