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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:	April 16, 2014)	Case No.: PSH-14-0037
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Issued : October 9, 2014

Revised Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

On September 11, 2014, I issued a decision which analyzed the Individual's access authorization eligibility under both Criterion H and Criterion L. The Local Security Office did not invoke Criterion L in the March 2014 Notification Letter. This decision has been modified to reflect that Criterion L is not at issue in this case. The outcome of the decision has not changed.

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the Individual") to hold an access authorization^{1/} 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the Individual's access authorization should be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual's mental stability. The LSO conducted two Personnel Security Interviews (PSI) with the Individual in May 2013 (May 14, 2013, PSI and May 28, 2013, PSI).

In March 2014, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a

^{1/} 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.

security clearance. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of a potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (h) (hereinafter referred to as Criterion H).^{2/}

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented one witness, a DOE consulting psychologist (DOE psychologist); the Individual presented his own testimony, and the testimony of three witnesses – his wife, his treating psychiatrist (Psychiatrist #2), and the contractor’s nurse-practitioner who approved his fitness to return to work. The LSO submitted 21 exhibits into the record; the Individual submitted three exhibits into the record.

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 (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 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.

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

^{2/} 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).

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 one criterion as the basis for suspending the Individual's security clearance, Criterion H. To support its allegations, the LSO references the Individual's 16-year history of depression, hospitalizations in 2010 and 2013, the latter for suicidal and possible homicidal ideations, and the opinion of a DOE psychologist that the Individual currently suffers from Major Depressive Disorder, Recurrent, Severe, as defined by the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. All of these matters relating to the Individual's mental health raise a security concern under Criterion H because the DOE psychologist opined that the Individual's Major Depressive Disorder could significantly and clinically impair his judgment and compromises his reliability. 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 certain emotional, mental, and personality conditions can impact one's judgment, reliability, or trustworthiness. The Individual's diagnosis in this case falls under Guideline I. Adjudicative Guidelines, ¶ 28(b).

IV. Findings of Fact

Except where otherwise indicated, the facts are undisputed. The Individual was diagnosed with depression in 1997. DOE Ex. 19. His treating psychiatrist (Psychiatrist #1) recommended that the Individual attend counseling for one year and take Paxil. DOE Ex. 19. The Individual completed the proscribed treatment, but six months later felt his depression returning. DOE Ex. 19. He immediately resumed treatment with his Psychiatrist #1. DOE Ex. 19. At that time, Psychiatrist #1 suggested another two years of counseling and Paxil. DOE Ex. 19. In 2003, after completing that course of treatment, the Individual was released to his primary care physician (PCP) and continued taking Paxil under his observation. Tr. at 45.

In May 2010, after years with no significant psychiatric event, the Individual was hospitalized after expressing some suicidal ideations to his family. He was diagnosed as suffering from Major Depressive Disorder by the treating mental health professionals at the hospital. DOE Ex. 18 at 31. Prior to his hospitalization, the Individual was recovering from a leg injury that he sustained at work. DOE Ex. 18 at 31. Upon returning to work after his injury, he was informed that his work was below an acceptable standard in quality or performance. DOE Ex. 18 at 31. Due to the stress from his work performance and injury and the medication prescribed for that injury, his depression worsened and he was admitted to the hospital for observation. DOE Ex. 18. After five days, the Individual was discharged and referred to Psychiatrist #2. DOE Ex. 18.

In December 2012, Psychiatrist #2 noted that the Individual's depression was worsening and he was experiencing signs of anxiety. DOE Ex. 14 at 4. The diagnosis given at that time was Major Depressive Disorder, Recurrent, in Partial Remission (Active). DOE Ex. 14 at 4. On January 3, 2013, the Individual began discussing ways to end his life. DOE Ex. 14 at 8. Psychiatrist #2 noted the same diagnosis of Major Depressive Disorder, Recurrent, in Partial Remission (Active). DOE Ex. 14 at 8.

On January 26, 2013, the Individual woke his wife by placing his hand on her throat twice. DOE Ex. 17 at 4. When she awoke, the Individual's wife found the Individual to be "very tearful and very upset." DOE Ex. 8. The Individual called Psychiatrist #2, and they agreed that he should go to the hospital to be admitted for crisis management. DOE Ex. 14 at 12. The hospital report reflects that the Individual was having "vague suicidal thoughts over the past weeks but did not result in action or plans." DOE Ex. 17 at 14. The notes also reflect that if the Individual thought that suicide was an option, he would need to "take his wife with him." DOE Ex. 17 at 14. The Individual, his wife, and Psychiatrist #2 all stated that his stress level had been increasing during late 2012 and early 2013 due to home and work related pressures and that the Individual was experiencing suicidal ideations. DOE Ex. 14 at 2. The Individual was feeling financial pressure because he was older and had little savings. DOE Ex. 14 at 2. In addition, his work functions were changing and he needed to learn new skills. DOE Ex. 8 at 15. Finally, both he and his wife were suffering from health-related issues. DOE Ex. 7 at 6. After a four-day hospitalization, the Individual was discharged on January 30, 2013. DOE Ex. 17 at 29. At the time of discharge, the Individual's diagnosis was Major Depressive Disorder. DOE Ex. 17 at 29.

In March 2013, the Individual was medically cleared to return to work after being evaluated by a nurse practitioner. The nurse practitioner reviewed Psychiatrist #2's medical records relating to the Individual, his hospital records from January 2013, and interviewed the Individual prior to medically clearing him to return to work. DOE Ex. 12.

In May 2013, the Individual underwent two PSIs with the LSO. The LSO conducted the first PSI on May 14, 2013, to inquire about the circumstances relating to the Individual's January 2013 hospitalization. DOE Ex. 11. The LSO held the second PSI on May 28, 2013, to clarify some discrepancies from the earlier PSI. DOE Ex. 7. During those PSIs, the Individual agreed to be evaluated by a DOE psychologist. In August 2013, the DOE psychologist evaluated the Individual and she completed her report on September 3, 2013. DOE Ex. 4. In her report, the DOE psychologist diagnosed the Individual as suffering from Major Depressive Disorder, Severe, Recurrent, and cited the *DSM-5* to support her diagnosis. DOE Ex. 4 at 5. She concluded that the Individual "has a mental health disorder which could significantly and clinically impair his judgment and compromises his reliability." DOE Ex. 4 at 5.

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)^{3/} and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should be restored. I 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.

^{3/} 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.

A. The Individual's Diagnosis

All the mental health professionals in the case, including the DOE psychologist and Psychiatrist #1 and Psychiatrist #2, agree that the Individual is suffering from depression. The doctors at the hospital where he was admitted in 2010 and 2013, the DOE psychologist, and Psychiatrist #2 all agree that the Individual suffers from Major Depressive Disorder (MDD). The degree of severity of the MDD is where their opinions differ. The DOE psychologist opined that the Individual's MDD was recurrent and severe. DOE Ex. 4 at 5. Psychiatrist #2 opined that, although recurrent, the Individual's MDD is in partial remission. Tr. at 112.

B. The Security Concern

The Criterion H concern raised by the LSO relates to whether the Individual's MDD causes or may cause a significant defect in judgment or reliability. The DOE psychologist stated in her report and reiterated at the hearing that the Individual's MDD could significantly and clinically impair his judgment and compromise his reliability. Based on the evidence readily available to the LSO at the time of the Notification Letter, the LSO properly invoked Criterion H based on the DOE psychologist's opinion.

Psychiatrist #2, however, disagreed with the DOE psychologist's opinion. He testified that the Individual's core functioning has not been affected by his MDD. Psychiatrist #2 opined that the Individual is high-functioning with a high intelligence, and a methodical, systematic person with solid, stable, and ethical principles. Tr. at 88. Psychiatrist #2 also stated that the Individual is "really devoted to his job, to his work." Tr. at 88. Psychiatrist #2 concluded that:

I would say depression has been a major health problem. . . . that has had a very significant impact in his life. However, he has not shown any impact on his cognitive function and his overall daily activities and his lifestyle, as it may have in other patients. I'm referring specifically to psychotic symptoms, unusual behavior, changes in personality or any sign of recklessness. That has never been a problem with [the Individual].

Tr. at 90. He went on to state that the Individual's suicidal ideations, which have been in evidence over the years, are passive as the Individual has never attempted to carry one out. Tr. at 118.

As noted above, there is a difference of opinion between the two mental health professionals that testified in this case. For the various reasons noted below, I find Psychiatrist #2's opinion to be more persuasive in this case. He has been treating the Individual for over four years, and he has spent considerably more time treating him. Tr. at 70. They meet at least monthly for medication management and counseling. Tr. at 100. It is apparent from his notes that he is counseling and observing the Individual during those meetings as well. DOE Ex. 8; DOE Ex. 14; Ind. Ex. A. He is intimately acquainted with the Individual and his mental health condition. Psychiatrist #2 opined that the Individual's MDD diagnosis has not changed his personality or core functioning. Tr. at 88. On the other hand, the DOE psychologist is of the opinion that the Individual's condition could significantly impair his judgment and compromise his reliability. She based this opinion on a 90-minute interview and a review of his DOE personnel file. DOE Ex. 4. She averred that the Individual's MDD has been uncontrolled for 17 years, which is in direct conflict

to the testimony of the Individual, his wife, and Psychiatrist #2. Tr. at 207. She also asserted that the Individual only sees Psychiatrist #2 every three to four months, which is in direct conflict with the Individual's, his wife's, and Psychiatrist #2's testimony and the documentary evidence. Tr. at 200; DOE Ex. 8. Therefore, while I find that the LSO properly invoked Criterion H, based on the hearing testimony presented by the Individual, his wife, and Psychiatrist #2, I find that the Individual's MDD does not currently cause a significant defect in the Individual's judgment or reliability.

C. Mitigation

Although I find that the Individual's MDD is not currently a concern under Criterion H, I will address the remaining concern about whether his MDD might impair his judgment, reliability, and trustworthiness in the future. Based on the record before me, I find that the Individual's MDD is readily controllable with treatment, that he has demonstrated ongoing and consistent compliance with the treatment plan and that he "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." Adjudicative Guidelines at Guideline I, ¶ 29(a)-(b).

Beginning in 1997, the Individual has consistently shown compliance with his treatment plan. When initially diagnosed with depression, Psychiatrist #1 recommended that the Individual attend one year of counseling and take Paxil. DOE Ex. 19. He completed that prescribed treatment, but six months later when he felt his depression returning he immediately resumed treatment with Psychiatrist #1 for another two-year period, as prescribed by Psychiatrist #1. Tr. at 19. After completing two years of counseling with Psychiatrist #1, Psychiatrist #1 released him to the care of his PCP for continuing observation. Tr. at 45. In May 2010, when the Individual felt his depression worsening, he sought help by being admitted to the hospital. The hospital personnel referred him to Psychiatrist #2, who has been treating him for MDD since 2010. DOE Ex. 18. They meet regularly, usually once a month. DOE Ex. 8; Tr. at 100. In January 2013, the Individual had a mental health crisis that ultimately culminated by his twice placing his hand on his wife's neck while she was asleep. Both times, his hand placement woke her up. He testified that although he was awake, he felt like he was dreaming. Tr. at 136. When she awoke after the second incident, he was "very tearful and very upset." Tr. at 34. After speaking with Psychiatrist #2 by telephone, they agreed he should go to the hospital to be evaluated. He was admitted to the hospital a second time. Psychiatrist #2 testified that, although the Individual's MDD cannot be cured, it can and is controlled. Tr. at 121. He opined that the Individual's MDD is in partial remission. DOE Ex. 8; Tr. at 112.

As stated above, I found the testimony of Psychiatrist #2, along with the Individual and his wife, to be persuasive. They were candid, open, and honest. In addition, Psychiatrist #2 and the Individual's wife, who is also a registered nurse, both stated that the Individual is very compliant with his medication and has never resisted treatment. The Individual's wife stated "he never misses appointments and whatever the doctor tells him that he's supposed to do, that's what he does. And if he doesn't understand something, he'll ask me to explain to him what the treatment's about or what the medicine is for. You know, he's very attentive to it." Tr. at 39. The Individual's two hospitalizations occurred when he expressed concern that his depression was worsening. DOE Ex. 17 at 14; DOE Ex. 18 at 31. From the very beginning, the Individual has been consistent and compliant with the treatment plans put in place by his health care professionals, thereby satisfying paragraph 29(a) of the Adjudicative Guidelines.

The Individual voluntarily entered into treatment, first in 1997 with Psychiatrist #1, and again in 1998 when the course of treatment was completed but the Individual felt his depression returning. DOE Ex. 19. He continued his voluntary treatment by consulting with Psychiatrist #2 after his hospitalization in 2010. DOE Ex. 18 at 31. The Individual continues in treatment with Psychiatrist #2, and Psychiatrist #2 testified that the Individual's MDD can be controlled. Tr. at 121. His continuing treatment and the favorable prognosis by Psychiatrist #2 satisfies paragraph 29(b) of the Adjudicative Guidelines.

In light of the persuasive testimony of Psychiatrist #2, I find that the Individual's current condition is controllable with treatment and that he has demonstrated ongoing and consistent compliance with that treatment plan and that he has voluntarily entered and continued counseling with a favorable prognosis by Psychiatrist #2. Therefore, he has resolved any Criterion H security concerns that might present themselves in the future.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H. After considering all the relevant information, both favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Criterion H. I therefore find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: October 9, 2014