

24), and participated in Personnel Security Interviews (PSI) in May 2008 (DOE Ex. 31), August 2011 (DOE Ex. 30), September 2011 (DOE Ex. 29), and June 2012 (DOE Exs. 28). In addition, the Individual completed the QNSP Part II in January 2012 and was evaluated by the HRP's consultant-psychiatrist in connection with his application for HRP certification. DOE Exs. 17, 25. In January 2014, the Local Security Office (LSO) referred the Individual to a DOE consultant-psychologist (the DOE psychologist) for an evaluation. DOE Ex. 16. In March 2014, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (h) and (l) (Criteria H and L, respectively).³ See DOE Ex. 1 (Notification Letter, March 26, 2014).

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual, represented by counsel, offered his own testimony as well as the testimony of his wife. In addition, the Individual submitted two exhibits into the record (Indiv. Exs. A - B). The DOE counsel presented the testimony of one witness, the DOE psychologist, and tendered thirty-two exhibits (DOE Exs. 1-32). See Transcript of Hearing, Case No. PSH-14-0056 (hereinafter cited as "Tr.").

II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including "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 of the individual at the time of the conduct; the voluntariness of 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," and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See 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).

³ Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician 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 conduct tending to show that the Individual was "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." 10 C.F.R. § 710.8(l).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter informing the Individual that the DOE possessed derogatory information which raised doubts regarding his continued eligibility to hold a DOE access authorization. According to the Notification Letter, this information raises security concerns under Criteria H and L of the Part 710 regulations. See DOE Ex 1.

As a basis for its Criterion H concern, the LSO cited the opinion of the DOE psychologist that the Individual meets the diagnostic criteria for Mild Neurocognitive Disorder which, according to the DOE psychologist, is an illness which causes, or may cause a significant defect in the Individual’s judgment. *Id.*, DOE Ex. 16. It is well-established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness,” and, thus, raise security concerns. Adjudicative Guidelines, Guideline I, ¶ 27. In light of the DOE psychologist’s diagnosis, the LSO properly invoked Criterion H.

The LSO also cited concerns under Criterion L which raise doubts about the Individual’s honesty, reliability, and trustworthiness, as well as his willingness and ability to satisfy his debts. DOE Ex. 1. In support of its concerns regarding the Individual’s candor, the LSO cited the HRP consultant-psychiatrist’s July 2013 evaluation report, in which she noted inconsistencies in the Individual’s responses, primarily regarding his medical issues, which she concluded were “indications of deceitful behavior,” and opined that it was unclear whether the Individual’s behavior was “willful deceitfulness for self-serving reasons, or a manifestation of cognitive impairment, or both.” *Id.* In addition, the LSO alleged that the Individual repeatedly failed to list required information on his security questionnaires, despite having been previously notified of the omissions, and informed that he must report the information on future questionnaires. *Id.* As a basis for its Criterion L concerns regarding the Individual’s financial responsibility, the LSO cited the following: (1) the Individual had seven unpaid collection accounts totaling approximately \$10,080, two charged-off credit card accounts totaling approximately \$42,800, and had a civil judgment placed against him in August 2012 for \$85; and (2) the Individual’s continued failure to resolve his debts, despite his previous assurances that he intended to do so, as well as his statements during his January 2014 psychological evaluation that he had \$15,000 to \$16,000 in savings, and that he spent money on recreational activities. *Id.*

According to the Adjudicative Guidelines, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's ability to protect classified information." *Id.*, Guideline E, ¶ 15. Among the conditions regarding an individual's conduct that may raise security concerns are "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" and "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative[.]" *Id.*, Guideline E, ¶¶ 16 (a), (b). In addition, it is well-settled that the failure or inability to live within one's means, satisfy debts, and meet financial obligations "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," which, in turn, may call into question an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline F, ¶ 18. Among the behaviors which may give rise to security concerns related to an individual's financial irresponsibility are an "inability or unwillingness to satisfy debts," "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt," a "history of not meeting financial obligations," and "consistent spending beyond one's means, which may be indicated by excessive indebtedness" *Id.* at ¶¶ 19(a), (b), (c), (e). Given the cited information regarding the Individual's candor and financial responsibility, I find that the LSO properly invoked Criterion L.

IV. FINDINGS OF FACT AND ANALYSIS

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

A. Criterion H – The Individual's Neurocognitive Disorder

As noted above, the Individual has worked for the DOE contractor from 2006 to 2009 and from 2011 to the present. Beginning in 2007, the Individual began seeking medical treatment from his physician for migraine headaches and "stress." DOE Ex. 16. However, the physician also determined that the Individual exhibited symptoms of depression and anxiety and prescribed various medications. *Id.* Despite the Individual's assertion that he was not depressed but rather was just suffering from stress, he was diagnosed with depression and/or anxiety disorder at various times between 2007 and 2010. DOE Exs. 22, 31 at 66.

Prior to his 2011 reinstatement with the DOE contractor, the Individual underwent a fitness-for-duty (FFD) evaluation during which he was evaluated by a DOE consultant-psychologist (the FFD psychologist) in late 2010. DOE Ex. 16.⁴ Although the FFD psychologist ultimately concluded that the Individual could return to work, he noted various deficits in the Individual's cognitive abilities. For example, in the area of executive function, the FFD psychologist concluded, based on the Individual's performance during various psychological tests, that the Individual "would likely falter during tasks which require him to exercise his own judgment quickly, while simultaneously demonstrating his ability to structure his activity." *Id.* The results of the

⁴ The FFD psychologist's report is appended as an attachment to the DOE psychologist's report. See DOE Ex. 16.

Individual's psychological tests further noted deficiencies in the Individual's ability to "make appropriate progress in learning and remembering things" and the "reliability and integrity of his verbal word recall." *Id.* The Individual's responses also suggested "an effort to present a socially acceptable front and resistance to admitting personal shortcomings," an unlikeliness to "admit responsibility for personal failures or for family difficulties," and a denial of "the presence of psychological tension or conflicts." *Id.* Ultimately, the FFD psychologist diagnosed the Individual with Cognitive Disorder [Not Otherwise Specified].⁵ *Id.*

In July 2013, the Individual was an applicant for HRP certification. In connection with his application, he was referred to the HRP psychiatrist for an evaluation. In her evaluation, the HRP psychiatrist noted the Individual's prior history of anxiety and depression, as well as his previous psychological tests, which indicated a mild cognitive impairment. DOE Ex. 17. She further noted that recent Magnetic Resonance Imaging (MRI) testing of the Individual revealed encephalomalacia (a softening or degeneration of brain tissue) on portions of the frontal lobe, likely due to past traumatic injury. The HRP psychiatrist opined that, separately, the Individual's conditions would not be of "major concern," but together they are "more likely to cause recurrent impairment in [the Individual's] physical and mental functioning." *Id.* She also concluded that there were inconsistencies in the Individual's reporting of the extent of his prior mental health treatment. In this regard, she noted that the Individual's responses indicated "deceitful behavior," but it was not clear whether his conduct was the product of "willful deceitfulness for self-serving reasons, [a] manifestation of cognitive impairment, or both." *Id.*

The DOE psychologist's more recent evaluation of the Individual echoed the findings of the FFD psychologist and HRP psychiatrist in their earlier evaluations. In his January 2014 report, the DOE psychologist opined that the Individual's "brain-based impairment" was of concern, noting that the Individual's "ability to accurately recall events, his difficulty assimilating a lot of information, his weak and at times peculiar expressive ability, and his low-average level of intellectual functioning can lead to poor judgment and unreliability." DOE Ex. 16. The DOE psychologist concluded that the Individual met the DSM-5 criteria for Mild Neurocognitive Disorder, due to trauma. According to the DOE psychologist, this is a mental condition which causes or may cause significant defects in judgment or reliability. He added that the Individual's condition, "along with his obstinacy and difficulty admitting common flaws, makes him likely to continue to have defects in his judgment or reliability." *Id.*

At the hearing, the Individual disputed his previous diagnoses. He testified that he did not believe that he had ever sought treatment for a mental health condition, regardless of his physician's diagnoses of, and prescriptions for, depression and anxiety. According to the Individual, "everything was just for the headaches." Tr. at 86. The Individual further testified that he did not recall his physician ever telling him that he had depression or anxiety. Tr. at 85-86. With respect to his diagnoses of neurocognitive disorder, the Individual disagreed with the opinion of the DOE psychologist, as well as the earlier assessments of the FFD psychologist and the HRP psychiatrist,

⁵ In making his diagnosis, the FFD psychologist applied the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*. The DSM-IV-TR has since been replaced by a subsequent edition, the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)*.

that he demonstrated impairment or deficits in his cognitive abilities. The Individual stated that he is “not a good reader” but is otherwise able to perform any task required of him. Tr. at 78. The Individual’s wife agreed with the Individual’s opinion that he did not have a cognitive impairment. Tr. at 123-24. She stated that the Individual is able to make critical decisions quickly when necessary, and that he does not have any difficulty processing or recalling information. *Id.* According to the Individual’s wife, the Individual exercises “very good judgment.” Tr. at 122.

After listening to all of the hearing testimony, the DOE psychologist did not change his opinion or the ultimate diagnosis that he made in his January 2014 report. Tr. at 150. In that regard, given the Individual’s condition and the attendant deficits that he noted in the Individual’s cognitive abilities, the DOE psychologist opined that the Individual is going to have “continued problems in reliability and judgment.” Tr. at 162. He further stated that Mild Neurocognitive Disorder is not a condition that is susceptible to treatment. *Id.*

Among the factors that may serve to mitigate concerns raised by an individual’s mental or psychological condition are: “the identified condition is readily controllable with treatment . . . ;” “[a] recent opinion by a duly qualified mental health professional . . . an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;” and “no indication of a current problem.” Adjudicative Guidelines, Guideline I, ¶ 29.

In this case, after considering the hearing testimony and evaluating the record as a whole, I am unable to find that the Individual has mitigated the Criterion H concerns raised by his diagnosis of Mild Neurocognitive Disorder. Three mental health experts over a four-year period diagnosed the Individual with a cognitive disorder, a condition which may cause significant defects in judgment and reliability. Moreover, the DOE psychologist testified that the condition is not amenable to treatment, and that the Individual is likely to have “continued problems” in the areas of judgment and reliability in the future. In the absence of any medical testimony to the contrary, I am convinced by the DOE psychologist’s testimony that the Individual continues to have a mental condition which causes, or may cause, significant defects in his judgment or reliability. Consequently, I find that the Individual has not mitigated the Criterion H concerns cited in the Notification Letter.

B. Criterion L – The Individual’s Conduct

As indicated above, the Notification Letter cited as security concerns information which raised doubts regarding the Individual’s honesty, reliability, and trustworthiness, as well as his willingness and ability to satisfy his debts. The two types of concerns – candor and financial responsibility – are each addressed, in turn, below.

1. Concerns Regarding the Individual’s Financial Responsibility

The Individual did not dispute the information set forth in the Notification Letter regarding his outstanding debts. Tr. at 32. He attributed his financial difficulties in large part to the uncertainty in his employment status over the last several years, including his loss of employment in 2009 and the current suspension of his security clearance which resulted in his being placed on unpaid

administrative leave. Tr. at 33-34. The Individual explained that several members of his household have serious medical conditions, and that, while he has some money available to him in his savings account, it is important that he keep money in reserve to pay for necessary medical treatments. Tr. at 33. The Individual testified that he intends to repay debts, and will begin doing so once he feels “more secure” in his employment status. *Id.*; Tr. at 93. He added that the majority of his outstanding debts are credit cards, and that his payments on routine bills, such as his mortgage and utility, are current. Tr. at 34. He acknowledged that he and his wife had taken a vacation, but testified that the trip was an anniversary gift from their children. Tr. at 36.

The Individual’s wife corroborated the Individual’s testimony regarding their financial situation. Tr. at 101-11. At present, they are not paying down their outstanding debts because they want to ensure that they have funds available for various medical expenses. Tr. at 106. The Individual’s wife testified that she and the Individual do not live an extravagant lifestyle. Tr. at 111. She further noted that they timely pay their household bills, and they have not accrued any new debts. Rather, their outstanding debts are old unpaid collection accounts and charged off debts. Tr. at 121. According to the Individual’s wife, they intend to resolve their outstanding accounts. Tr. at 112.

Among the factors that may serve to mitigate security concerns raised by an individual’s financial problems are that “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” or that “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment . . . [or an] unexpected medical emergency . . .) and the individual acted responsibly under the circumstances[.]” Adjudicative Guidelines, Guideline F, ¶ 20.

In this case, I find that the Individual has presented sufficient information to mitigate the security concerns regarding his financial responsibility. While the Individual had accumulated some debt prior to his loss of employment in 2009, it is clear that the upheaval uncertainty caused by the change in his employment status exacerbated his financial situation, making a previously manageable amount of debt suddenly untenable. Given the extensive and unpredictable nature of medical conditions of members of the Individual’s household, his decision to keep his extra funds in reserve rather than to exhaust his savings to repay old collection accounts or charged-off debt was reasonable under the circumstances. Moreover, the Individual has acted responsibly in maintaining his routine financial responsibilities, and has not accrued any new debts. Given these facts, I find that the Individual’s current financial difficulties happened under such unusual circumstances that it does not, in and of itself, cast doubt on his current reliability, trustworthiness, or good judgment.

2. Concerns Regarding the Individual’s Candor

With respect to the security concerns regarding his honesty, reliability, and trustworthiness, the Individual acknowledged that he omitted certain required information when he completed security questionnaires. However, he testified that he did not deliberately do so, and he never intended to withhold information or mislead the DOE. Tr. at 38. The Individual attributed certain omissions to his misunderstanding of the questions, others to his belief that the required information had

already been provided, and the remainder to his belief that his answers were complete and correct. Tr. at 22-32, 49-59. With respect to his purported inconsistencies in providing information regarding his mental health treatment, the Individual believed he answered those questions honestly because he did not believe he sought treatment for anything other than stress or chronic headaches. Tr. at 58-59, 62-63. The Individual's wife also testified that the Individual was "honest," "selfless," and "very well-liked." Tr. at 113-14.

As noted above, with respect to an individual's honesty and candor, the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . ." and "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative" raises security concerns. *Id.*, Guideline E, ¶¶ 16 (a), (b). In this case, upon consideration of the hearing testimony and the entire record of this proceeding, including the Individual's candor and demeanor at the hearing, I find it unlikely that the Individual deliberately attempted to conceal or withhold information. The Individual's omissions were likely a product of the neurocognitive condition with which he has been diagnosed, discussed in detail above, rather than any deliberate lack of candor on his part. Having concluded above that the Individual has not mitigated the security concerns regarding his mental condition, and finding that his omissions of required information were likely caused by the condition, I am unable to conclude that the behavior at issue "happened under such unique circumstances that it is unlikely to recur in the future and does not cast doubt on [the Individual's] reliability, trustworthiness, or good judgment." See Adjudicative Guidelines, Guideline E, ¶17. Therefore, although the concerns regarding the Individual's honesty and candor have been sufficiently mitigated, due to his mental condition, security concerns with respect to his reliability and trustworthiness remain.

Based on the foregoing, I find that the security concerns set forth in the Notification Letter under Criterion L have not been fully resolved.

V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria H and L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to fully resolve all of the security concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura

Administrative Judge
Office of Hearings and Appeals

Date: September 11, 2014