

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

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

In the Matter of Personnel Security Hearing )  
 )  
Filing Date: October 22, 2015 ) Case No.: PSH-15-0090  
 )  
 )  
\_\_\_\_\_ )

Issued: January 28, 2016

**Administrative Judge Decision**

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 her to hold DOE access authorization. An incident report, dated January 7, 2015, filed with the Local Security Office (LSO), reflected that local police were dispatched to the individual’s residence in reference to a suicide attempt. *See* Exhibit 3. Subsequently, the LSO conducted a personnel security interview (PSI) with the individual. *See* Exhibit 6. Since the PSI did not resolve concerns about the incident and the individual’s psychological condition, the LSO referred the individual for evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual. *See* Exhibit 4.

\_\_\_\_\_   
<sup>1</sup> 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.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns arising from the incident and the individual's psychological condition, the LSO informed the individual in a letter dated August 21, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (h) (hereinafter referred to as Criterion H).<sup>2</sup> See Exhibit 1.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. See Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced eight numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced eight lettered exhibits (Exhibits A – H) into the record and presented the testimony of seven witnesses, including that of herself and of her treating psychiatrist. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>3</sup>

## **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 (9<sup>th</sup> 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 granting or restoring his or her 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 or her 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.

---

<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).

## **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 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 cited one criterion as the basis for suspending the individual's security clearance: Criterion H. Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." See 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). Conduct influenced by such psychological conditions can raise questions about an individual's ability to protect classified information. With respect to Criterion H, the LSO relied on the May 2015 written evaluation of the DOE consulting psychologist in which she concluded that (1) the individual met the criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR)*, for Alcohol Related Disorder Not Otherwise Specified,<sup>4</sup> and that this is an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability, and (2) the individual has personality characteristics found in personality disorder criteria in the *Diagnostic Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)*, which, while not meeting the criteria for a *DSM-5* Personality Disorder, are indicative of a mental condition which causes, or may cause, a significant defect in judgment or reliability. Ex. 1; Ex. 4 at 10-11.

In light of the information available to the LSO, the LSO properly invoked Criterion H.

## **IV. 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

---

<sup>4</sup> In the May 2015 evaluation submitted to the DOE, the DOE consultant psychologist wrote that the individual met the "criteria for a *DSM-IV-TR* mental disorder diagnosis of Alcohol Use Disorder Not Otherwise Specified (*DSM-IV-TR* 291.1)." Ex. 4 at 10. However, the *DSM-IV-TR* does not contain a diagnosis with that name and assigns the cited diagnostic code to "Alcohol-Induced Persisting Amnestic Disorder," which is not a disorder discussed in the DOE psychologist's report. See *DSM-IV-TR* at 16. During my examination of the DOE psychologist at the hearing, she clarified that her report should have concluded that the individual met the criteria for a *DSM-IV-TR* mental disorder diagnosis of "Alcohol Related Disorder Not Otherwise Specified," which has a *DSM-IV-TR* diagnostic code of 291.9. Tr. at 211. To avoid confusion, this Decision shall conform all references to the alcohol diagnosis made by the DOE psychologist to the intended diagnosis – Alcohol Related Disorder Not Otherwise Specified (291.9).

prescribed in 10 C.F.R. § 710.7(c)<sup>5</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

### **A. Mitigating Evidence**

The investigation into the individual's continued eligibility for access authorization resulted from an incident report filed with the LSO, describing that local police had visited the individual's residence in early 2015, in reference to a suicide attempt. Ex. 3 at 1. It is uncontested that two days prior to the police visit, the individual had combined a quantity of a prescription medication with alcohol and, subsequently, emailed a friend in a distant city describing what she had done and stating that she "didn't want to be alive, [she] felt too bad." Tr. at 108-10, 112. When the friend read the email two days after it had been sent, the friend contacted police in the individual's jurisdiction and requested they do a welfare check on the individual. *Id.* at 113. The police visit culminated in the individual being transported to a local hospital where she was examined and released, without conditions, on the same day. *Id.* at 114-15.

This incident occurred during a holiday season at the end of an extremely stressful year for the individual: two close relatives had died; her mother, who suffered with Alzheimer's disease, had been institutionalized and, at the time of the incident, had been recently relocated (notwithstanding the individual's objections) to a different state and was in her final weeks of life; her extended family was in conflict over assets; some of the same relatives were attempting to alienate the individual's daughter from her; and her daughter was attending to her father over the holidays because of another death days prior to the holidays. *Id.* at 93-97, 102-11.

During this period, the individual was under the care of a psychiatrist. *Id.* at 98-100. He testified at the hearing that he did not view the individual's behavior, which led to the police welfare check, as an attempted suicide or even as a cry for help, but as parasuicidal behavior to alleviate pain. *Id.* at 198.

Her treating psychiatrist further testified that the DOE consulting psychologist was accurate in that the individual met the diagnostic criteria for Alcohol Related Disorder Not Otherwise Specified, as of the time of the incident; however, the individual had subsequently conformed her alcohol consumption to a level he had recommended, her current level of alcohol consumption was responsible, and she no longer warranted the alcohol diagnosis. *Id.* at 121-22, 185-86, 194, 201. With respect to the alcohol disorder, he opined that she had a favorable prognosis and he did not "anticipate that she will have problems with alcohol in the future." *Id.* at 190.

Following the incident, the individual commenced Dialectical Behavior Therapy (DBT), initially believing that it was required by her employer and, then, voluntarily continued the treatment after learning it was not a requirement. *Id.* at 157-60. As of the date of the hearing, she had been in DBT

---

<sup>5</sup> 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.

for one year and credibly testified that she intended to continue the treatment. Ex. 5 at 5; Tr. at 120-21. The individual's licensed mental health counselor confirmed the individual's compliance with a rigorous DBT program that included both individual therapy and a two-hour skills group weekly and daily homework. Ex. D at 1. At the hearing, the individual testified as to the benefits to her of the DBT treatment, including greater awareness and understanding of emotions as she experiences them; mindfulness surrounding alcohol consumption, as well as mindfulness of diet, exercise and mood; and the ability to name and express emotions in a proper way. Tr. at 160-61.

The individual's psychiatrist testified that he has observed one characteristic in the individual that is also an element of a *DSM-5* Personality Disorder; however, in the case of the individual, the characteristic does not manifest in a manner consistent with a the Personality Disorder and does not adversely reflect on her judgment or reliability. *Id.* at 197, 204-06. He also confirmed the intensive nature of DBT and opined that, at the present time, the individual manifested no indications of emotional instability. *Id.* at 185, 191.

Based on the foregoing, the individual argues that she has mitigated the security concerns cited by the Notification Letter.

#### **B. Administrative Judge Evaluation of the Evidence and Findings of Fact**

The individual's treating psychiatrist attended the entire hearing and testified as the individual's final witness, having heard her testimony and that of her other witnesses. The psychiatrist treated the individual from 2000 to 2003 and, again, from 2012 to the present. *Id.* at 98, 182. In addition to the typical function of a psychiatrist in prescribing psycho-tropic medications, his sessions with the individual are full "hour" sessions and include supportive psychotherapy. *Id.* at 182-83. In light of the length and breadth of his treatment of the individual, I have given significant weight to his testimony.

He corroborated the individual's testimony that she initiated more frequent appointments with him as the psychological pressures in her personal life mounted in 2014, increasing appointments from once every three months to once a month, and opined as to her awareness of her psychological state. *Id.* at 183-84. As noted above, he agrees with the DOE consulting psychologist that at the time of the January 2015 incident, the individual was diagnosable under the *DSM-IV-TR* as suffering from Alcohol Related Disorder Not Otherwise Specified. He also testified that the individual has reduced her alcohol consumption to conform to all of his recommendations and that her present use of alcohol constitutes responsible use. As of the date of the hearing, his professional opinion is that the individual no longer warrants an alcohol diagnosis. *Id.* at 121-22, 185-86, 201. He has substantial experience treating alcohol and substance abuse and recognizes the inherent risks of relapse; however, he testified his confidence in the individual is such that she is in "the top percentile" of those who are not going to have a future alcohol problem. *Id.* at 202. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(a), (b), (c), (e).

Additionally, he testified that during the course of treating the individual he has never diagnosed her with a Personality Disorder. The single personality characteristic that he has observed in her that meets one of the multiple criteria necessary for a Personality Disorder diagnosis does not present in the individual in the way it presents in an individual who has a Personality Disorder. Tr. at 197, 204-06. This characteristic, in the opinion of the individual's psychiatrist, does not constitute a mental

condition which causes, or may, cause a defect in her judgment or reliability. *Id.* at 206. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(e).

The DOE consulting psychologist testified as the final witness at the hearing, having heard the testimony of all the other witnesses, noting the substantial change in the individual's demeanor from the time of her initial evaluation of the individual and the quality of the individual DBT counseling. Tr. at 209-10. The DOE psychologist confirmed the accuracy of her alcohol diagnosis of the individual, as of the time of her evaluation. However, noting the testimony presented at the hearing, the DOE psychologist opined that, as of the hearing, the individual no longer merited the Alcohol Related Disorder Not Otherwise Specified diagnosis. *Id.* at 208-09. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(a), (b), (c), (e).

She also testified that it is difficult to make an accurate evaluation of the personality structure of a person with active substance use. Tr. at 209. With the individual's alcohol problem having abated, together with the individual's substantial counseling and her changed demeanor which was observable during the six-hour hearing, the DOE psychologist opined that, as of the hearing, she no longer viewed the individual as having characteristics of a Personality Disorder which constituted a mental condition that causes, or may, cause a significant defect in her judgment or reliability. *Id.* at 210. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(e).

Both the individual's psychiatrist and the DOE consulting psychologist testified that as of the date of the hearing, the individual did not have an illness or mental condition which causes, or may cause, a significant defect in her reliability or judgment. Tr. at 206, 212. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(e).

Based upon the foregoing, I find that the individual has resolved the Criterion H security concerns.

## **V. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criterion H. After considering all the relevant information, 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. 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.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: January 28, 2016