

(Notification Letter). The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge in this case. The DOE introduced 15 exhibits (Exs. 1-15) into the record of this proceeding, and called the DOE psychologist as a witness. The individual introduced four exhibits (Exs. A-D), and presented the testimony of four witnesses, in addition to his own testimony. *See* Transcript of Hearing, Case No. PSH-16-0005 [hereinafter cited at “Tr.”].

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative review proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information 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 Criteria H and L, respectively). Exhibit 1.³ To support Criterion H, the

³ Criterion H relates to information indicating that the individual has an “illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychiatrist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Under Criterion L, information is derogatory if it indicates that the individual 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 interest of the natural security. Such

LSO cited the diagnosis by the DOE psychologist of Intermittent Explosive Disorder, under DSM-5 (*Diagnostic and Statistical Manual for the American Psychiatric Association, Fifth Edition*), which causes, or may cause, a significant defect in his judgment or reliability. *Id.* The LSO relied on the following information to support its application of Criterion L: 1) in May 2015, the individual was arrested and charged with Aggravated Assault Against a Household Member with a Deadly Weapon, a fourth degree felony, and Battery against a Household Member, a misdemeanor, after he had a physical altercation with his wife and threatened to kill her while holding a handgun; 2) in March 2008, the police were called and made contact with the individual for a domestic family abuse/argument regarding an incident between him and his girlfriend; 3) in July 1999, the police responded to an altercation between the individual and his son and, during his PSI in July 2000, the individual admitted kicking his son in the stomach; 4) in September 1998, the individual was served with a protective order after pushing his fiancée into the wall at a restaurant a few months earlier; 5) in August 1994, the individual's former wife filed for an order prohibiting domestic violence against him after he harassed her at her workplace; 6) in November 1993, his wife sought a temporary protective order against him after he picked her up and pushed her against a wall; and 7) while the individual admitted in his PSI in July 2000 that in July 1999, he kicked his son in the stomach, in his July 2015 PSI, he denied kicking his son in the stomach and stated that he kicked him in the buttocks, but then later, during his psychological evaluation in October 2015, he admitted that he kicked his son in the stomach and in the buttocks. Ex. 1.

I find that this information adequately justifies the DOE's invocation of Criteria H and L. The individual's Intermittent Explosive Disorder is a mental condition that may impair his judgment, reliability or trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines) (Guideline D). The failure to be truthful during a personnel security interview also raises questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.* (Guideline E). Moreover, his criminal conduct and pattern of domestic violence reflect poor judgment, and also calls into question the individual's future reliability and trustworthiness and his willingness to comply with laws, rules and regulations. *Id.* (Guidelines E & J).

IV. FINDINGS OF FACT

A. The Individual's History of Domestic Violence and Angry Outbursts⁴

The individual is a mature adult who is married and has children. Ex. 4. He married his first wife when he was 18 years old and they had a daughter. Ex. 4 at 2. About a year and half into their marriage, they started having troubles and there were a few instances where they pushed each other, and once when he grabbed her by the neck. *Id.* The individual became physically abusive towards his first wife two to three times a year. *Id.* In November 1993, his wife filed for a restraining order against him because he reportedly pushed her and threw her against a garage wall. *Id.* at 3. At his evaluation with the DOE psychologist, the individual did not remember what happened, but apparently, a friend tried to grab him from behind and then fighting ensued before the individual

conduct or circumstances include, but are not limited to, criminal behavior,...." 10 C.F.R. § 710.8(l).

⁴ At the hearing, the individual stated that information in the DOE psychologist's report as to the domestic violence incidents are factually based and that he was involved in those incidents. Tr. at 34.

regained some self-control. *Id.*; Ex. 2. At his PSI in January 1996, the individual explained that he and his wife got into a verbal altercation, and as she was pushing herself away from him, she hit him with her car keys in his chest and shoulder and scratched his face. Ex. 14 at 41. Afterwards, he picked her up and pushed her against the wall, and by that time, he “was already seeing red, basically black.” *Id.* When his friend tried to intervene, the individual flipped him over. *Id.* A week after that incident, his wife filed for two more protective orders against him; in the first order, the court found that the individual abused his wife by pushing and throwing her against a garage wall and the second order granted his wife temporary custody of their children, bimonthly child support, and the right to remain in their home for six months. Ex. 4 at 3.

In August 1994, the individual reportedly followed his wife to work and had a verbal altercation with her, which he also did not recall during his evaluation by the DOE psychologist. *Id.* His children were allegedly present while he verbally abused her in a “vulgar and obscene matter.” *Id.* at 3-4. Later that afternoon, she filed for a restraining order against him, which he violated two months later by calling her after he observed her in a car with another man. *Id.* at 4. At his 1996 PSI, he indicated that he knew that he was supposed to follow the court orders, but that in the moment his emotions took over. Ex. 14 at 70-72. The individual and his wife later divorced in 1994. In October 1995, his first wife told the OPM investigator that while they were married, the individual was physically abusive two or three times a year. Ex. at 4. In his PSI in 1996, the individual stated that he believed that he “recovered from all this,” his children see a “total transformation” in him, and if he got into an argument with his girlfriend that escalated, he would “walk away” because he has “no reason to stand there and battle it out with anybody.” Ex. 14 at 111-112.

However, in June 1998, the individual pushed his then-fiancée into a wall at a restaurant, after which she served him with a restraining order. *Id.* Furthermore, in July 1999, he got into a fight with his teenage son; the individual claims to have been defending himself when he kicked his son in his stomach.⁵ *Id.* at 5; Ex. 11 at 81. After his son got up and refused to leave his home, the individual pushed him and kicked him in the buttocks. *Id.* The individual reported this to personnel security the next day or two. Ex. 8. At the hearing, he stated that his son was “not a small guy,” and that his son was trying to come through his double doors to attack him and that he was defending himself. Tr. at 86.

During his 2000 PSI, the individual stated that he is “good for a year or two,” when he has no “flare-ups,” and then “all of a sudden, [he’ll] have a flare-up.” Ex. 12 at 15. In February 2000, he received a reprimand letter from his employer after he became frustrated from having to assist another employee because he was busy and others were available to help. Ex. 4 at 5. One worker who was present said that he observed the individual throw a heavy steel lid and hit the wall with it. *Id.* However, another employee who was also present said that she did not observe the individual throw the lid at the wall. *Id.* The reprimand stated that the individual became “extremely irritated and possibly violent in the workplace.” Ex. 12 at 18. As a consequence, he had to attend anger management. *Id.* At the hearing, the individual claims that he did not throw the lid across the room, but only moved it there. Tr. at 29. Notably, his 2001 OPM investigation report indicated that the

⁵ He later denied during his PSI in July 2015 that he kicked his son in the stomach, but admitted that he hit and kicked him.

individual “recognized and admitted his inappropriate behavior and accepted [] Employee Assistance Counseling [EAP] for stress and anger management.” Ex. 4 at 6.

While he was participating in counseling through EAP, the individual discussed when he became angry at work and home. *Id.* In April 2000, he described being angry and threatening his then second wife; he also said that he was “scared at his inability to temper his anger.” *Id.* His counselor expressed that the individual alluded to his wife that he might kill her in front of his mother if his wife did not go away. *Id.* During an intake with EAP in February 2000, the individual acknowledged that his second wife was afraid that he would become physical towards her. *Id.*

In March 2008, while dating a woman who would become his third wife, the police were called after they had an altercation. *Id.* He reported that his wife became physical with him by ripping his shirt off and scratching him because she was not ready to pick up his daughter from school, and she called the police. *Id.* He allegedly told the police that he wanted to “choke her around the neck.” *Id.* At the hearing, the individual explained that he never touched his wife and that as she was hitting and scratching him, he put his arms up to protect himself. Tr. at 69. He said that when the officers arrived, they asked them both if they wanted to press charges, to which they responded “no.” Tr. at 70.

Finally, and most recently, in May 2015, the individual was arrested and charged with Aggravated Assault against a Household Member with a Deadly Weapon (fourth degree felony) and Battery against a Household Member (misdemeanor). *Id.* The case was dismissed in October 2015 because the individual completed a portion of his agreement with the state and continued to attend regular treatment. Ex. D. Two days before his arrest, the individual and his wife were packing because they sold their home, and his stress increased when his wife confronted him about having a Facebook account. *Id.* at 7. She accused him of lying about his Facebook account and said that she could not trust him; tensions between them ensued the next few days. *Id.* A few days later, he heard his wife tell his mother that he was “unworthy” of staying with her and insult him about his “manliness.” *Id.* The individual reported that he became “enraged” and told his wife to leave. *Id.* She started packing her things, but apparently not fast enough for him, and then as they passed in the hall, he “chest bumped” her, after which she accused him of hitting and threatening her. *Id.* The anger escalated and his wife called the police. *Id.* He then said to her, “If you are gonna call the police on me then fine...you can call ‘em on me and I’ll give ‘em a reason to come and ... I said, so you want me to kill you, I’ll kill you then...,” and he acknowledged that it was “dumb” of him to say that and that he’d “never think about anything like that.” Ex. 11 at 26. He said the threats while his wife was on the phone with the police. Ex. 4 at 7. He then left the room and grabbed a holster, after removing the pistol from it, and pointed the holster in her direction, saying “... I said you want me to ... scare you and hurt you...” Ex. 11 at 26. While his wife was still on the phone with the dispatcher, she said, “He’s gonna kill me, he’s gonna kill me.” Ex. 4 at 7. Afterwards, he took the holster back into his room, put the pistol in it, and put it under the bed. *Id.* When the officers arrived at his home, he was belligerent and would not sit down, and his son who was outside had to come inside the home to calm the individual down. *Id.* Eventually, he sat down, and his wife told the officers that he hit her several times and pushed her. *Id.* He described his anger as “just a lot of bravado, being real loud and boastful...showing my dominance...” Ex. 11 at 36.

The individual submitted a letter from his wife as an exhibit, wherein she stated that he has never physically abused her in any manner and admitted that she “may overreact and exaggerate.” Ex. A. She stated that the incident that led to his arrest in May 2015 was her fault and that she takes full responsibility for it. *Id.* She wrote that while she was being questioned, her statement changed many times, and that she “was coerced by the authorities to exaggerate on at least two instances that occurred, eventually leading to the arrest.” *Id.* She stated that she “made a blind accusation that a weapon was involved,” when she never saw anything because her back was to the individual and that she accused him of “chest bumping” her when he actually inadvertently touched her while passing in front of her. *Id.*

At the hearing, the individual acknowledged that he pointed a holster at his wife and that what he did in May 2015 was “unacceptable.” Tr. at 62, 71. He stated that his wife putting him down as a man and a husband triggered his reaction. Tr. at 66. He said that “she was pushing certain buttons, and it ticked [him] off.” Tr. at 67. Moreover, the individual acknowledged that he told her that if she is going to call the police, he will give her something to call the police for, and that he showed her the holster, which scared her. Tr. at 71. He also admitted telling her that he was going to kill her. Tr. at 71. When the police arrived, he claims that he was calm and not angry or using any abusive language towards them. Tr. at 72. However, he did not feel like sitting down at the officer’s request, stating “I have every right in my home not to sit down.” Tr. at 72.

B. The Individual’s Current Treatment

The individual began seeing a therapist after his arrest in May 2015. Tr. at 36. He currently sees her every other week, and about a month and half before the hearing, he was seeing her weekly. Tr. at 77. He began therapy because of his arrest and his criminal defense attorney, who requested that he see a therapist, with which the judge agreed. Tr. at 36-37. In therapy, the individual has talked about his childhood and his relationship with his mother, who was in abusive romantic relationships while he was growing up. Tr. at 47. He often tried to stop his mother’s partners from hurting her, and even once took a gun away from his mother’s boyfriend. Tr. at 47-48. Thus, he claims he developed issues with anger. Tr. at 47-48. His therapist has not given him a diagnosis but agrees that the DOE psychologist’s diagnosis of the individual with Intermittent Explosive Disorder is appropriate. Tr. at 50, 96.

The individual contends that through therapy, he has learned to control his emotions when he is in a tense situation. Tr. at 49. If something triggers him, he now takes a deep breath and tells himself that he is in charge of his emotions, and it is easier to walk away from the situation. Tr. at 51, 63. For example, he stated that when he gets upset because his wife calls him and tells him that they should be together, his therapist tells him that instead of getting upset, to just ignore her phone calls or text messages. Tr. at 53. He lives with his mother now to care for her since she has medical issues; he is seeing his wife but not living with her, stating that if their relationship improves, they will attend marriage counseling. Tr. at 55. The individual’s goal in therapy is to learn how to control his reactions and manage his anger. Tr. at 56. He stated that he is still dealing with “basic issues” in his therapy and that his therapist has not yet identified his triggers. Tr. at 58. He also believes that he does not have a problem with controlling his anger and can walk away from a situation that would otherwise cause him to become angry. Tr. at 78. However, the individual has not encountered a

trigger in the form of a personal attack since the incident in May 2015. Tr. at 79. His plan is to continue with therapy and any recommended treatment. Tr. at 82.

The individual's therapist testified that her work with him involves debriefing, processing, and working on how to change his reactions to certain situations. Tr. at 91. She opined that his ability to intervene on his behalf has improved in the last six months, he is able to self-reflect and "the potential for outbursts are diminished." Tr. a 93. She believes that he has a good prognosis because he now has the tools to deal with his anger, such as pausing and reflecting before responding to text messages from his wife, exercising, engaging with music and martial arts, doing breathing exercises, and writing to process his childhood experiences. Tr. at 95, 97, 100. She also believes that while he has gained insight into what is causing his outbursts, he does not completely understand where they are coming from. Tr. at 98-99.

C. DOE Psychologist's Recommendation and Testimony

The DOE psychologist evaluated the individual in October 2015 and concluded that the individual meets the criteria for Intermittent Explosive Disorder because of the following: 1) his failure to control his repeated verbally and physically aggressive impulses, 2) the magnitude of his aggressive outbursts are out of proportion to the incidents that stimulated his anger, 3) his outbursts are not premeditated, and 4) his outbursts caused him noticeable distress and interfered with his job. Ex. 4 at 12. The psychologist also stated that people who are diagnosed with Intermittent Explosive Disorder often have a history of significant head trauma, which the individual has experienced after having suffered a number of head injuries while growing up.⁶ Ex. 4 at 10. In his report, the DOE psychologist stated that the severity of the individual's outbursts may decrease with age. Ex. 4 at 13. He believes that his current therapy should continue until the individual and his therapist "believe that he grasps this etiology and the underlying motives are worked through." Ex. 4 at 13.

At the hearing, the DOE psychologist stated that the individual has had fewer episodes of angry outbursts as he has gotten older because testosterone levels which contribute to male anger decrease with age. Tr. at 107. However, he cannot conclude at this point that the individual will not have another outburst either at work or in his personal life, and in fact suspects that it will happen more. Tr. at 107-108. He also cited how the individual – just a few months prior at his evaluation – expressed that he did not believe that his anger was well under control. Tr. at 108. The DOE psychologist also believes that the individual's outbursts have almost always happened with women who have aggravated him by challenging his masculinity, which his therapist did not address. Tr. at 109. While he stated that the individual's therapy has been effective in teaching him how to use certain tools before having an outburst, he does not believe that his therapy will change his behavior as it does not address the causes of his outbursts. Tr. at 110. He stated that the individual is "still loaded for the explosions" by not understanding how he is triggered by women, explaining that "if

⁶ When he was six years old, the individual hit the corner of a cabinet very hard while running which caused a scar over his right eye. Ex. 4 at 10. A few days later, he fell, hitting his head on the headboard after jumping on his bed. *Id.* When he was 10 years old, another boy hit him with a pool cleaning tool while he was leaving a swimming pool which caused him to lose consciousness. *Id.* When he was 13 years old, his bike flipped over while he was riding it and his face hit the ground, which caused him to lose consciousness. *Id.* Finally, when he played football, he had several hard hits to his head. *Id.*

the right circumstances were to occur, and a woman was involved in it, I think the chances of him maybe losing that control again is – is there.” Tr. at 110-112. He stated that even with two or three years of therapy, that it will not “be able to effect the kind of change that [he] think[s] really defuses that tendency, that gets to the bottom of his solidarity as a man, and that doing this is not a very manly thing.” Tr. at 112.

D. Lay Testimony

The individual had three colleagues testify on his behalf. Two of them have known him for approximately 20 years and stated that they have never seen the individual display any anger that was out of control or explosive. Tr. at 13, 20. They did not have any personal knowledge of the incident where the individual allegedly threw the lid at work. Tr. at 15, 20. Another colleague who has known the individual for approximately eight years testified that he has never seen the individual “lose his cool” even in stressful work environments where he had to deal with frustrating managers. Tr. at 25-27. His colleagues also testified that the individual displays good judgment. Tr. at 13, 25.

V. ANALYSIS

After due deliberation and consideration of the testimony and exhibits, I conclude that the individual has not resolved the concerns pertaining to his diagnosis, criminal conduct and pattern of domestic violence. I do, however, find that the individual resolved the concerns regarding his dishonesty during a personnel security interview discussing an incident involving his son that occurred in July 1999.

While the individual stated at the PSI in July 2015 that he did not kick his son in the stomach in July 1999, he did admit at the 2000 PSI that he kicked his son in the stomach, and in his 2015 PSI, admitted that he punched his son and kicked him in the buttocks. Moreover, about a day or two after that incident in July 1999, the individual reported to the personnel security office that he kicked his son and hit him in the stomach. Ex. 8. During the hearing, the individual also discussed what happened between him and his son in July 1999. Thus, in light of early reporting of the incident in July 1999 and subsequent statements acknowledging that he kicked and hit his son in the stomach, the individual has resolved the concerns associated with his denial that he kicked his son in the stomach at the July 2015 PSI. *See* Adjudicative Guideline E, ¶ 17(c).

However, the concerns regarding the individual’s diagnosis of Intermittent Explosive Disorder and pattern of criminal conduct and domestic violence have not been resolved. His outbursts were not isolated incidents or temporary and he has not demonstrated that the Intermittent Explosive Disorder is readily controllable with his current treatment. *See id.* at Guideline I, ¶ 29(d). While I commend the individual for engaging in therapy, I am persuaded by the DOE psychologist’s testimony that the individual still does not understand his triggers and accordingly, under certain circumstances, he may lose his control again and have another outburst. *See id.* at Guideline I, ¶ 28(a). The individual’s therapist testified that the individual has a good prognosis as he now has tools to deal with his anger, but she also acknowledged that he does not completely understand the cause of his angry outbursts. Given that and the DOE psychologist’s testimony that the individual is “still loaded for the explosions,” the individual has not provided adequate evidence that his condition is under control or

that there is a low probability of recurrence. *See id.* at Guideline I, ¶ 29(c); Guideline E, ¶ 17(d). Moreover, during his 1996 PSI, after he was divorced from his first wife who he physically abused, he stated that he recovered and transformed and that if he were to get into an argument that escalated, he would walk away. However, just two years later, he pushed his ex-fiancée into a wall, after which she obtained a protective order against him. Similarly, here, the individual states that he has developed tools, such as pausing and taking a moment to reflect, before responding to a situation before it escalates, less than a year after threatening to kill his wife while pointing a holster at her. Further, in his 2000 PSI, the individual acknowledged that he can be “good for a year or two” before having another “flare-up.” Ex. 12 at 15. Accordingly, I am not convinced that he will not have another explosive incident.

Additionally, the individual has not resolved the concerns regarding his criminal conduct and pattern of domestic violence. As recited above, the individual has a long history of committing domestic violence offenses that date back to the early 1990s. The offenses that he committed against his ex-wives, ex-fiancée, son and current wife are not so minor and were not so infrequent so as to conclude that they are “unlikely to recur and do[] not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” *See id.* at Guideline E, ¶ 17(c). He even threatened to kill his current wife in May 2015 and alluded in the past that he might kill his second wife. Moreover, as to his criminal conduct, he was arrested and charged in May 2015 and that case was recently dismissed in October 2015 based on the individual’s participation in regular treatment. Accordingly, insufficient time has elapsed to find that the concerns from that incident have been resolved, which are exacerbated by the multiple protective orders, violations of those orders, and incidents involving the police from his aggressive behaviors in intimate relationships over at least the last 20 years.

Hence, in light of the above, and given the seriousness, frequency and recency of his conduct, I conclude that the individual has not sufficiently mitigated the concerns cited in the Notification Letter as paragraphs I and IIA. 10 C.F.R. §§ 710.7(a) (“Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.”), (c). Accordingly, the individual’s authorization shall not be restored at this time.

VI. CONCLUSION

For the reasons set forth above, I conclude that the individual not has resolved the DOE’s security concerns cited in the Notification Letter criteria H and L. Therefore, the individual has not demonstrated that restoring him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual’s security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: March 29, 2016