

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

In the Matter of:	Personnel Security Hearing)	
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Filing Date:	October 28, 2016)	Case No.: PSH-16-0082
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Issued: March 1, 2017

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXX (hereinafter referred to as “the individual”), to hold an access authorization¹ 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 DOE access authorization and, as a holder of DOE access authorization, he is subject to periodic security reinvestigations. As part of a routine security reinvestigation, the individual completed a Questionnaire for National Security Positions (QNSP) in October 2014, which was forwarded to the U.S. Office of Personnel Management (OPM) for investigation. The OPM investigation revealed that the individual was receiving treatment for certain mental health conditions and had previously received psychological counseling. *See Exhibit 9.* The local security office (LSO) subsequently conducted a personnel security interview (PSI) with the individual in April 2016 with respect to these matters. *See Exhibit 8.* Since the PSI did not resolve concerns about the individual’s mental health,

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.

the LSO referred the individual for evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual in June 2016. *See* Exhibit 6.

Since neither the PSI nor the psychological evaluation resolved the security concerns arising with respect to the individual's mental health, the LSO informed the individual in a letter dated September 27, 2016 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In 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).² *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his 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 nine numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced four lettered exhibits (Exhibits A – D) into the record and presented the testimony of seven witnesses, including that of himself, his treating psychiatrist, and a consulting 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.³

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 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).

² See Section III below.

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.doe.gov/search.htm.

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.

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 June 2016 written evaluation by the DOE consulting psychologist which concluded that: (1) the individual met the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)*, for Autism Spectrum Disorder (ASD), mild in severity; (2) the individual's ASD combined with his occasional psychotic tendencies can result in mildly psychotic disturbances in his beliefs, perceptions, and reasoning; and (3) these tendencies have created, and are likely to continue to create, significant defects in the individual's judgment and/or reliability. Ex. 1 at 1; Ex. 6 at 13.

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

IV. Findings of Fact and 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)⁴ 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.

As noted previously, the LSO alleges a single security concern in the Notification Letter: the individual 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 his judgment or reliability. *See* Ex. 1. In suspending the individual's access authorization, the LSO relied upon the opinion of a DOE consulting psychologist, who concluded that the individual has such an illness or condition. *See* Ex. 6. The individual contests this conclusion and, at the hearing, presented the testimony of both his treating psychiatrist and a consulting psychiatrist to refute the conclusions of the DOE consulting psychologist; the individual also submitted into the record a written psychiatric evaluation prepared by his consulting psychiatrist. *See* Tr. at 140-185, 269-327; Ex. C. All three expert witnesses are highly credentialed, highly respected, and well-qualified mental health professionals. While all three experts found that the individual suffers from certain psychological conditions, there is disagreement as to the nature and the significance of those disorders.

In June 2016, the DOE consulting psychologist⁵ reviewed the individual's security file and conducted a psychological evaluation of the individual, which included a three-hour, 15-minute clinical interview and the administration of standard psychological testing. Ex. 6 at 1. Following the interview, the DOE consulting psychologist conferred by telephone with the individual's treating psychiatrist. Ex. 6 at 13; Tr. at 331-332. The DOE consulting psychologist and the individual's treating psychiatrist work in the same community and have collaborated professionally in the past. *Id.* at 361. The DOE consulting psychologist reached several conclusions based on his evaluation, which he documented in his written evaluation of the individual. The DOE consulting psychologist concluded that the individual met the *DSM-5* diagnostic criteria for ASD, mild in severity; however, he noted that the individual's ASD does *not* result in significant defects in the individual's judgment or reliability. He also opined that "[w]hen [the individual] becomes 'overwhelmed' with anxiety, his behavior has, on occasion, become temporarily delusional, his reasoning oblique, and his ability to express clarifying similes sometimes became peculiar to the point of bizarre.... [The individual] can become temporarily psychotic." Ex. 6 at 13. The DOE

⁴ 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.

⁵ As noted previously, the LSO referred the individual for a psychological evaluation following receipt of information during a periodic security reinvestigation that the individual was receiving treatment from a psychiatrist for a mental health condition. There was no contemporaneous incident or behavior, either in the workplace or in the community, which triggered the LSO's referral of the individual for psychological evaluation.

consulting psychologist opined that the individual's ASD, "when combined with [the individual's] occasional psychotic tendencies ... can result in mildly psychotic disturbances in his beliefs, perceptions, and his reasoning. These [psychotic] tendencies have created and are likely to continue to create significant defects in his judgment and/or reliability." *Id.* Based upon these conclusions, the LSO suspended the individual's access authorization.

Two years prior to the time of the DOE psychological evaluation, the individual had expected to meet his wife and daughter at an establishment to process a passport for his daughter. Tr. at 234. When his wife did not arrive when he expected her, the individual decided to wait and, after a considerable period of time and some sporadic interaction with a clerk, was asked to leave the establishment. *Id.* at 235-236. When he preceded to wait outside the establishment, the clerk became alarmed by his behavior and called the police. The police arrived and detained him but, after questioning outside of the establishment, he was released without being charged and was instructed not to return to the establishment. *Id.* at 236-237. At the time of this event, the individual had been recently taken off of a psychotropic medication by his primary care doctor (due to possible side effects) and was suffering from untreated sleep apnea. The individual testified that the event was alarming to him and, being aware that both family members and co-workers had noted his increasing irritability,⁶ he decided to seek qualified medical assistance. Immediately thereafter, he voluntarily began treatment with a psychiatrist who has continuously treated him since that time (May 2014) and who testified at the hearing. *Id.* at 238, 245-246. The treating psychiatrist sees patients (including the individual) in 45-minute sessions, combining counseling with pharmaceutical evaluation. *Id.* at 161. She also included consultations with the individual's wife as part of her evaluation and treatment of the individual. *Id.* at 154. The treating psychiatrist testified that she initially diagnosed the individual with Unspecified Anxiety Disorder and, subsequently, with Attention Deficient Disorder. *Id.* at 148-149.

The individual's treating psychiatrist had been treating the individual for two years when she was contacted by the DOE consulting psychologist following his clinical interview with the individual. She testified that she was alarmed by the observations and concerns of the DOE consulting psychologist and immediately scheduled an appointment with the individual. *Id.* at 155-159. The treating psychiatrist testified that she works collaboratively with other health professionals and knows and respects the work of the DOE consulting psychologist. *Id.* at 160. The treating psychiatrist treated the information she received from the DOE consulting psychologist as "data points" for use in treating of the individual. *Id.* She focused several additional sessions working with the individual based upon these "data points." After such reevaluation of the individual, she testified that she concluded the individual has elements of ASD but lacks both the significant impairments required for an ASD diagnosis and the overall criteria required under the *DSM-5* for an ASD diagnosis.

⁶ Both the individual's treating psychiatrist and his consulting psychiatrist testified that the individual's behavior at the commercial establishment and his irritability at home and work were likely affected by his primary care doctor having discontinued treatment of the individual with a psychotropic medication prior to the occurrence of such behaviors. Tr. at 176, 295.

Id. at 168. She also explored the one psychotic episode and the other psychotic tendencies described to her by the DOE consulting psychologist. With respect to the psychotic episode noted by the DOE consulting psychologist, the treating psychiatrist testified that during her sessions with the individual he described insights (contemporaneous to the event) that were inconsistent with his having experienced a clinical delusion. *Id.* at 162. Her investigation also disclosed no psychotic behavior, tendencies or episodes. *Id.* at 162-166. As of the hearing, her treatment of the individual had continued for an additional six months.

The treating psychiatrist was present at the hearing for testimony by certain of the individual's co-workers and noted that that testimony matched "perfectly" with the individual's descriptions during their sessions of his workplace and work relationships. *Id.* at 167.

She testified that the individual follows all of her treatment recommendations. *Id.* at 181. She is still treating the individual for anxiety and Attention Deficient Disorder; the anxiety symptoms have been resolved and he is responding well to the treatment for Attention Deficient Disorder. *Id.* at 179-180. She views his prognosis as good with respect to the disorders that she has diagnosed and is treating. *Id.* at 182. The individual's treating psychiatrist concluded that, in her professional opinion, the individual does not have an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability. *Id.* at 170, 181.

Following the suspension of the individual's access authorization, he retained a consulting psychiatrist,⁷ who conducted a psychiatric evaluation of the individual which included a five-hour clinical interview. Ex. C; Tr. at 271. He also interviewed the individual's wife (which the DOE consulting psychologist is precluded from doing pursuant to DOE guidelines) and the individual's treating psychiatrist. Ex. C at 2. His diagnoses of the individual were similar to those of the treating psychiatrist⁸ and he did not find a basis for a clinical diagnosis of ASD or any psychotic tendencies, which were the diagnoses of the DOE consulting psychologist. Tr. at 296-297, 299-302, 310, 314-322. The individual's consulting psychiatrist described during his testimony his evaluation of the individual with respect to the *DSM-5* criteria for ASD and the various behaviors described in the written evaluation of the DOE consulting psychologist as psychotic or reflecting psychotic tendencies. *Id.* In each instance, he provided persuasive explanations for his conclusions that the individual did not meet the diagnostic criteria for ASD and that, in each of the events cited by the DOE consulting psychologist, the individual had not exhibited psychotic tendencies. Particularly persuasive was the consulting psychiatrist's analysis with respect to the absence of dissembling in the individual's thinking when he described

⁷ The individual's consulting psychiatrist treats patients as well as consulting on psychiatric matters; he is a Retired Brigadier General, U.S. Army (Medical Corp.), whose military service included conducting and supervising Military Medical Review Boards and Medical Evaluation Boards for disability, impairment, retirement, and security clearances. Ex. C at 1; Ex. D; Tr. at 270-271.

⁸ The individual's consulting psychiatrist gave the individual a primary diagnosis of Generalized Anxiety Disorder, with secondary diagnoses of Attention Deficient Disorder, Sleep Apnea, and Dysthymia. Tr. at 307.

the event which the DOE psychologist had concluded was a psychotic episode; the psychiatrist testified that even after one has left a psychotic state he or she is likely to display some dissembling in thinking when recounting the psychotic event. *Id.* at 280. Further, the consulting psychiatrist opined that the oblique reasoning that concerned the DOE consulting psychologist is more appropriately understood as normal psychophysiological reactions associated with the individual's anxiety. *Id.* at 296-297.

Consistent with the conclusions the of treating psychiatrist, the individual's consulting psychiatrist concluded that, in his professional opinion, the individual does not have an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability. *Id.* at 309, 325-326.

The DOE consulting psychologist testified as the final witness at the hearing, having been present throughout the hearing and having heard testimony all of the other witnesses. At the hearing, he elaborated on the views expressed in his written evaluation, opining that the individual's ASD results in him experiencing anxiety (likely the result of his discomfort surrounding interpersonal interactions) and, when that anxiety reaches a sufficient level, it could result in the individual having a psychotic episode.⁹ *Id.* at 365-366, 370-371. He acknowledged that only one of the events described in his written evaluation constituted a psychotic episode and that that single event had occurred approximately 22 years earlier. *Id.* at 360. He stated that the connecting factor between the individual's ASD and psychotic tendencies, in his opinion, was anxiety,¹⁰ which could produce momentary psychotic episodes. *Id.* at 365-366, 370-371. While he disagrees with the diagnoses of the individual's treating psychiatrist, he believes that her treatment is effective for his diagnoses of the individual. *Id.* at 369. With respect to whether, as of the date of the hearing, the individual continues to have an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability, the DOE consulting psychologist testified that he thought that the individual's prognosis was good but that he remained vulnerable to a momentary psychotic episode ("days or a short period") in the event of a significant non-work event, such as something "happening" to his wife or one of his children.¹¹ *Id.* at 353-354, 365-368. I would ordinarily conclude that an individual who had voluntarily entered treatment, was compliant with treatment which a mental health expert had testified was effective for his diagnoses, and had a favorable prognosis had likely resolved their mental health experts concerns. *Cf.* Adjudicative Guidelines at Guideline I, ¶¶ 29(a) and 29(b).

⁹ During the hearing, the DOE consulting psychologist strenuously objected to observations by the individual's consulting psychiatrist that the DOE psychologist conflated ASD and psychotic tendencies with respect to the individual. Tr. at 305-306, 313-314, 348-349. While the DOE psychologist testified that these were two separate diagnoses, he ultimately described (as noted above) that the individual's ASD could result in anxiety and, if the anxiety reached sufficient level, the anxiety could trigger a psychotic episode. *Id.* at 365-366, 370-371. I am unable to reconcile the DOE psychologist's objection to the observation that he conflated ASD and the psychotic tendencies with his testimony describing this linkage that he believes exists between those two diagnoses which he had given the individual.

¹⁰ I note that the DOE consulting psychologist's written report contains no "anxiety" diagnosis and he acknowledged that absence at the hearing under examination by the individual's counsel. Tr. at 355.

¹¹ These concerns appear overly attenuated, especially in light of the 22 years that have elapsed since the occurrence of the single event which the DOE consulting psychologist concluded was a psychotic episode.

However, the DOE consulting psychologist's description of the individual remaining "vulnerable" to a future momentary psychotic episode suggested that the DOE psychologist had unresolved concerns and, notwithstanding my attempts at the hearing to clarify the testimony of the DOE psychologist, it remains unclear to me whether or not the DOE psychologist believed as of the date of the hearing that the individual had a psychological condition which causes, or may cause, a significant defect in his judgment or reliability.

While I am uncertain as to the ultimate conclusions of the DOE consulting psychologist, I am persuaded by the credible testimony of both the individual's treating psychologist and consulting psychiatrist that the individual does not have ASD and has not actually experienced any psychotic tendencies or episodes. I am particularly persuaded by the testimony of the individual's treating psychiatrist in light of the on-going treating relationship that she has with the individual. As of the date of the DOE psychological evaluation, she had been treating the individual for two years and her sessions with the individual are full 45-minute sessions that include both counseling and pharmaceutical evaluation. The individual's treating psychiatrist and the DOE consulting psychologist have previously collaborated on the care of patients. Tr. at 160, 348, 360. Upon hearing of the concerns of the DOE consulting psychologist (which occurred prior to both his submission of his evaluation to the LSO and the suspension of the individual's access authorization), the treating psychiatrist undertook a vigorous reevaluation of her diagnoses and treatment of the individual. *Id.* at 155-160. Following such reevaluation of the individual, she concluded that the individual had experienced no psychotic tendencies or episodes and that he had no illness or mental condition that caused, or may cause, a significant defect in his judgment or reliability. *Id.* at 162-166, 168, 170, 181. The individual's consulting psychiatrist independently reached the same conclusion. *Cf.* Adjudicative Guidelines at Guideline I, ¶ 29(e). For those conditions diagnosed by the treating psychiatrist, which she opined did not affect the individual's judgment and reliability, the individual is complying with her treatment recommendations and has a good prognosis. Tr. at 181. *Cf.* Adjudicative Guidelines at Guideline I, ¶¶ 29(a) and 29(b). As of the hearing, the individual had been in treatment with his treating psychiatrist since May 2014 and he testified as to his intent to continue in treatment with her indefinitely. Tr. at 245-246.

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: March 1, 2017