



In September 2016, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell 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).<sup>2</sup>

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony and that of four witnesses. The DOE Counsel called one witness, the DOE psychologist. The LSO submitted a number of written exhibits prior to the hearing; the individual presented no exhibits. 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.

## **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 denial"); *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 at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for Administrative Judge's Decision**

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<sup>2</sup> Criterion H relates to information that a person has "[a]n 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). Criterion L relates, in relevant part, to information that a person 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 national security. . . ." 10 C.F.R. § 710.8(l).

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 in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance: Criteria H and L. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from a compulsive desire to view pornography or sexual addiction, and the expert's opinion that this compulsion is a mental illness that could cause a significant defect in the individual's judgement and reliability. As for Criterion L, the LSO cites the individual's admission to knowingly viewing pornography on his government computer approximately 15 to 30 minutes every week to every other week, from March 2015 to April 2016, as well as the individual's admission that he viewed pornography on his government computer despite knowing it was against his employer's policy. *See Ex. 1.*

I find that the information set forth above constitutes derogatory information that raises questions about the individual's behavior under both Criteria H and L. First, a mental condition such as a sexual addiction can impair a person's judgment, reliability and 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). Second, the non-compliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. *See id.* at Guideline M.

### **IV. Findings of Fact**

In May of 2016, the individual's employer conducted an investigation of the individual concerning reports that he was viewing pornography on his government computer. During the course of the investigation, the individual was restricted from local access to security areas and was not allowed to be escorted into those areas pending the outcome of the investigation. As a result of the investigation, a review board imposed disciplinary action of suspension for two weeks without pay and issued a letter of reprimand to the individual for viewing pornography on a government computer. *Ex. 1.*

In June 2016, the individual participated in a PSI. During the course of the PSI, the individual acknowledged watching pornography on nearly a weekly basis from 1994 to the present. He further admitted to knowingly viewing pornography on his government computer approximately

15 to 30 minutes every week to every other week, from March 2015 to April 2016. He did so despite knowing that it was against his employer's policy. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On August 1, 2016, the DOE psychologist evaluated the individual. In his report, the DOE psychologist stated that the individual has a mental condition, the compulsive desire to view pornography (sexual addiction), which is difficult for him to control and that causes significant defects in his judgment and reliability. Additionally, the DOE psychologist noted that the individual's narcissistic tendencies foster and support his unreliability and can, in their own right, also cause significant defects in judgment and reliability. *Id.*

## **V. Analysis**

I have thoroughly considered the record in 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)<sup>3</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. Based on the facts in this record, I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### **1. Criterion H: Sexual Addiction**

The individual does not dispute the DOE psychologist's diagnosis of sexual addiction. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

#### **a. Evidence of Rehabilitation and Reformation from Sexual Addiction**

During the hearing, the individual testified that he grew up in a strict religious home in which sex was never discussed. Transcript of Hearing (Tr.) at 100. He stated that he began viewing pornography during his first year of college as an emotional release. The individual described his behavior as experiencing a very short period of satisfaction followed by deep shame and guilt because of his religious upbringing. *Id.* He testified that he got married after college and shortly afterward began the first of four extra-marital affairs. *Id.* at 105. The individual stated that he felt "entitled" to have affairs. *Id.* He explained that he had four affairs because his wife never liked to have sex and the opportunities for the affairs presented themselves; thus he took advantage of them. *Id.* at 106.

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<sup>3</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.

The individual testified that he would view pornography at home when his wife left the house to run errands, but stated that he stopped viewing at home because he did not want to expose his daughter to his behavior. *Id.* at 112. He testified that he then began viewing pornography at work. *Id.* According to the individual, he described the first time he viewed pornography at work as a “total accident.” *Id.* at 113. After not experiencing any consequences for his “accident”, the individual testified that he began to actively look for pornographic sites. He acknowledged that he broke his employer’s policy. *Id.*

The individual testified that he is now undergoing therapy with two psychotherapists as well as participating in counseling sessions with his Employee Assistance Program (EAP) counselor. Through his various therapy sessions, he testified that he has learned that his issues stem in large part from unresolved anger with his wife and parents. He believes he developed an addiction to pornography when it became a coping mechanism for him. The individual stated that he is now learning of healthy ways to deal with his emotions instead of repressing them. *Id.* at 123. He further testified that he has more confidence now that he has been in therapy and has a support system, including his therapists and friends, which he has not had in the past. *Id.* The individual acknowledged that he still has issues to work on with his wife in light of the pain he has caused in the marriage. He testified that he would like to go to marriage counseling with his wife, but is preparing himself emotionally for the possibility that his wife may not want to reconcile. Finally, the individual testified that since his participation in therapy, he has not viewed pornography at work or at home. Although he acknowledged that he has had the urge to view pornography on a couple of occasions, he has not acted out on those urges but rather has used the skills he has learned with his therapist to focus on and address the triggers. *Id.* at 136. When asked about where he sees himself on the path to recovery, the individual stated that he believes he is still on a journey of recovery and recognizes that he still has a lot of work to do. *Id.* at 134.

During the hearing, the individual also offered the testimony of his two psychotherapists, his EAP counselor and a friend. Psychotherapist #1 testified that the individual has been in therapy with him for 12 years for marital issues, and that he has addressed his addiction to pornography during his therapy sessions. *Id.* at 13. He testified that the individual and his wife have had “virtually a sexless marriage” for 12 years which helped to feed into the individual’s addiction. *Id.* at 19. He further testified that the individual was unable to manage his problem with pornography, and put himself and his job in jeopardy. *Id.* According to the psychotherapist, the individual has undergone cognitive behavioral therapy with him and has been able to work through trapped emotions which had a direct connection to his acting out. *Id.* at 23. Specifically, Psychotherapist #1 testified that he had examined the individual’s childhood experiences during therapy. He noted that the individual has learned that his strict upbringing and his lack of love and attention in childhood as well as his marriage, are the backdrop to his addiction. *Id.* at 24. The psychotherapist testified that he believes the individual has a need to be in a loving relationship where there is sexual fulfillment. *Id.* at 27. He noted that since the individual’s marriage is still in question, he has worked with the individual on addressing his compulsion regardless of whether he has someone in his life who fulfills his needs. *Id.* He has focused on helping the individual to make healthy choices.

Psychotherapist #1 testified that the individual has been honest and transparent during their sessions. He further noted that the individual regularly participates in group recovery meetings and has made phenomenal progress since October 2016. He opined that the individual's prognosis is good and risk of relapse is minimal. *Id.* at 33.

Similarly, the individual's second psychotherapist (Psychotherapist #2) who was referred by the EAP counselor and specializes in dialectical behavioral therapy (DBT), testified that she has been treating the individual since October 2016. *Id.* at 51. She stated that the individual attends both individual and group therapy sessions twice a week. *Id.* He has learned, through his therapy sessions, the skills to deal with his emotions. According to Psychotherapist #2, the individual did not know how to deal with his anger and had communication issues with his wife. *Id.* at 52. She noted that the individual is extremely remorseful for his behavior and understands that he has an addiction. Psychotherapist #2 further testified that the individual's prognosis is good if he remains in therapy for one year. *Id.* at 57. Finally, the individual's EAP counselor testified that the individual sought EAP advice on August 5, 2016, after the suspension of his clearance. *Id.* at 75. She stated that the individual has seen her for 13 sessions, and she believes he is doing an excellent job of recovering. *Id.* at 86. The EAP counselor further testified that the individual has shown tremendous growth in the recovery process, noting that he had an epiphany sometime around the fourth session with her. *Id.* at 89. She believes the individual's prognosis is good and that he has a low probability of repeating his behavior. *Id.* at 94.<sup>4</sup>

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he has now observed much more evidence of "narcissistic elements" in the individual's behavior, noting that the individual has the tendency to put himself and his own pleasures over the emotional cost of others. *Id.* at 140. Specifically, he testified that the individual's willingness to seek pornography so much that he was willing to hurt his wife and risk losing access to his adopted daughter speaks to putting one's self and one's needs above the common good or commitments that one has, which is a narcissistic tendency. *Id.* at 140 and 141. According to the DOE psychologist, unless this element of the individual's behavior is addressed, he remains vulnerable. *Id.* He testified that while he was impressed with Psychotherapist #1's ability to get to know the individual in a deeper way that is important to his therapy, he is concerned that the individual is meeting with three therapists. He opined that the individual should settle on one therapist, probably Psychotherapist #1 who has worked with him for a number of years, who would work with him twice a week using behavioral therapy. *Id.* at 143. The DOE psychologist testified that unless this occurs, he did not "see a prognosis of the [individual] doing more than a year or two of abstinence, and I see it as low." *Id.* at 144. He added that the individual needs to learn why he is using pornography as a vehicle to address something within himself. *Id.* However, the DOE psychologist opined that if the individual continues with therapy, particularly solely with Psychotherapist #1, the individual's prognosis is moderate to good that he will be able to abstain from viewing pornography. He noted, however, that if the individual were to stop his therapy today, his prognosis of being able to not use pornography is low. *Id.* at 144 and 146. Although he opined that he would like to see the individual in therapy for one year, he noted that the

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<sup>4</sup> The individual's friend testified that he met the individual at church about three years ago and has served as his "accountability partner" since August 2016 to help the individual address his addiction. In this role, the friend testified that he met with the individual almost every week. He has noticed positive changes in his behavior and testified that the individual has become more open and honest about his life story.

individual's psychotherapist would have to determine the time period needed for rehabilitation. *Id.* at 147.

## **b. Administrative Judge's Evaluation of the Evidence**

In the administrative process, Administrative Judges accord deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).<sup>5</sup> In addition, the Adjudicative Guidelines describe factors that could mitigate security concerns related to psychological conditions such as sexual addiction. *See Adjudicative Guidelines*, Guideline I, ¶ 29. In this case, the individual has satisfied, to some extent, the following mitigating factors: (1) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; (2) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling with a favorable prognosis by a duly qualified mental health professional; and (3) the individual's psychotherapists and EAP counselor have opined that the individual has a good prognosis and that his risk of relapse is low. Guideline I, ¶29 (a)-(c). Notwithstanding such mitigation, I am not yet persuaded or convinced that the individual has sufficiently mitigated the security concerns related to his mental condition. At the outset, I am more persuaded by the opinion of the DOE psychologist that the individual should complete one year of therapy in order to achieve adequate evidence of rehabilitation. The individual had only completed about four months of therapy as of the date of the hearing for a compulsion or addiction that he has struggled with for most of his adult life. While the individual's psychotherapists and EAP counselor all agree that the individual has made excellent progress in his therapy sessions and has developed skills to deal with his emotions, it is clear that they also believe that the individual is still on the road to recovery. Psychotherapist #2 echoed the DOE psychologist's opinion that the individual's prognosis is good if he remains in therapy for one year. During the hearing, the individual also acknowledged that he is in the "middle" of his recovery and still has a lot of work to do. Tr. at 134. Moreover, as of the date of the hearing, the individual is still working with three mental health experts, which the DOE psychologist does not recommend. For these reasons, I find that the individual has not sufficiently resolved the DOE's security concerns under Criterion H.

## **2. Criterion L**

The DOE's concerns under Criterion L relate to the individual's admission to knowingly viewing pornography on his government computer approximately 15 to 30 minutes every week to every other week, from March 2015 to April 2016, and doing so despite knowing that it was against his employer's policy.

Among the factors which could serve to mitigate the security concerns raised by the individual's behavior are: (1) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (2) the misuse was minor and done only in the interest of organizational efficiency and effectiveness; and (3) the conduct was unintentional or

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<sup>5</sup> Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>.

inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor. *See* Adjudicative Guidelines, Guideline M at ¶ 41 (a)-(c). As stated above, the individual has not yet sufficiently mitigated his psychological condition under Criterion H. Similarly, I am not yet persuaded nor convinced that the individual has sufficiently mitigated the security concerns under Criterion L. In this case, the individual's misuse of his government computer was not minor, nor was it done in the interest of organizational efficiency and effectiveness. Rather, the individual's misuse was serious, recent and occurred for a prolonged period of time, from March 2015 to April 2016. In addition, the individual's conduct was intentional despite knowing he was violating his employer's policy against such use. I am most concerned that the individual misused his government computer for a little over a year. The egregious nature of this violation demonstrates a lack of good judgment, and I believe still casts doubt on his current reliability, trustworthiness or good judgment. In the end, I find that the individual has not yet resolved the Criterion L concern.

## **VI. 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 Criteria H and L. 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 find that the individual has not brought forth convincing evidence to adequately resolve the security concerns associated with Criteria H and L. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: March 29, 2017