

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

In the Matter of Personnel Security Hearing)	
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Filing Date: January 9, 2017)	Case No.: PSH-17-0001
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Issued: April 4, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 discussed below, after carefully considering the record before me, I have determined that the DOE should not restore the Individual’s access authorization at this time.

I. Background

The Individual is employed at a DOE facility as a contractor employee. This position requires the Individual to possess a DOE security clearance. In May 2016, the local security office (LSO) received an incident report concerning the Individual viewing sexually explicit pictures on his workplace computer. Exhibit (Ex.) 3 at 1. In June 2016, the LSO conducted a personnel security interview (PSI) with the Individual. Ex. 8. The PSI did not resolve the security concerns. Consequently, in an October 2016 letter (Notification Letter), the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance, and that his security clearance was suspended. Ex. 1. Specifically, the Notification Letter stated that the LSO possessed information falling within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (Criterion L).²

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.

² Criterion L refers to information that suggests that an 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 interests of the national security.” 10 C.F.R. § 710.8(l).

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The LSO submitted eight exhibits (Exs. 1-8) into the record, and the Individual submitted two exhibits (Ind. Exs. 1-2). At the hearing, the Individual presented his own testimony along with the testimony of his spouse, his counselor (Counselor), his pastor and Christian counselor (Christian Counselor), his direct supervisor (Supervisor), and a facility Employee Assistance Program counselor (EAP Counselor).

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 (1998) (“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).

An individual must come forward with evidence to convince the DOE that 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.

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.* In considering these factors, the Administrative Judge also consults Adjudicative Guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).*

III. The Notification Letter and the Security Concerns at Issue

The LSO cites a May 2016 incident report indicating that the Individual used a government-owned computer to view sexually explicit images. Ex 5. Additionally, the LSO cites the Individual's admission in the PSI that he had viewed these images while at work from 2012 to January 2016, and that he had been previously disciplined in 1997 for viewing similar images while at work. Ex. 8 at 15-24; *see* Ex. 5 at 11; Ex. 7. Given this information, the LSO had sufficient grounds to invoke Criterion L. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

IV. Findings of Fact

The Individual did not deny the allegations contained in the Notification Letter; instead, at the hearing he focused his testimony on his remorse for his behavior and the steps he has taken to address DOE's concerns. The Notification Letter stated that the Individual viewed 495 sexually explicit pictures using the Individual's government-owned computer. Ex. 1 at 1. The Individual admitted that he viewed pornography on his computer from 2012 to 2016, up to three times a week for fifteen minutes each time. *Id.* He viewed pornography up to two times a day. *Id.* He also admitted that he would masturbate in the office bathroom. *Id.* Finally, he admitted that he engaged in this conduct despite receiving a reprimand in 1997 for similar behavior. *Id.*

During the hearing, the Individual apologized for his behavior and explained his desire to keep his job. Tr. at 82-83. Through his therapy with the Counselor and the Christian Counselor, the Individual believes that his past obsession with pornography was a product of his upbringing and a lack of affection from his family. *Id.* at 83-87. In keeping his obsession secret, the Individual felt guilty and that this obsession was contrary to his faith and beliefs. *Id.* at 89. He felt particularly guilty keeping this secret from his family. *Id.* The Individual stated that he has changed tremendously through counseling. *Id.* at 87. Consequently, he has an understanding of his obsession and now has it under control. *Id.* at 93. He only uses his work computer to do training and review e-mails. *Id.* at 94. He also moved the location of his computer screen so that it is visible to his colleagues. *Id.* at 94-95. Furthermore, he revealed his struggle to his spouse, his adult children, and members of his church. *Id.* at 91-94, 98-99. As a result, he relies upon his spouse, children, counselors, and church members for support and to keep him accountable. *Id.* at 98-99. Moreover, he has learned to be more open with his spouse regarding his desire for physical intimacy. *See id.* at 96.

The Individual's spouse of 33 years testified that the Individual has noticeably changed for the better through his participation in counseling. *Id.* at 44. The spouse testified that she knew the Individual was previously reprimanded for viewing pornography at work in 1997. *Id.* She also testified that she was diagnosed with breast cancer that same year. *Id.* As a result of her health, she and the Individual had never fully addressed the 1997 incident. *Id.* at 45.

The spouse stated that since the Individual started counseling, he has become markedly more open. *Id.* at 49. For instance, the Individual revealed his problem to their adult children, his supervisor,

and his co-workers. *Id.* Furthermore, the Individual speaks openly with her about the underlying cause for his behavior, and she believes that the Individual now understands the internal conflicts which contributed to his compulsion to view pornography. *Id.* at 50. The spouse testified that their marriage is much better as a result of the Individual's efforts. *Id.* at 51. Moreover, she stated that she is absolutely confident that the Individual is trustworthy, and not a security threat. *Id.* at 50.

The Counselor testified that the EAP Counselor referred the Individual to him for treatment. *Id.* at 14. The Counselor is a master's level licensed therapist, and he has worked in the field of mental health and addiction treatment for thirty years. *Id.* Prior to the hearing, the Counselor conducted four sessions with the Individual. *Id.* The Counselor stated that the Individual suffers from sexual addiction. *Id.* at 18. In the Counselor's view, the underlying issue of the Individual's addiction was not adequately addressed by the reprimand the Individual received in 1997. *Id.* By contrast, a key part of the Individual's counseling is to discover the causal reasons for his problematic behavior. *Id.* The Counselor described the type of "triggers" the Individual might face in the future, such as encountering arousing images on the internet. *Id.* at 21. The Counselor testified that the Individual has a treatment plan that employs tools such as rehearsed cognitions. *Id.* at 23. For example, if the Individual views an arousing image, he should consider that the depicted woman is an actual person, somebody's mother or daughter, and not a sexual object. *Id.* at 21-23. The Counselor testified that effective treatment typically results in positive outcomes for people with compulsion issues similar to the Individual. *Id.* at 19. The Counselor also noted that the Individual has consistently had the support of his spouse. *Id.* at 26.

The Counselor stated that the Individual "at present is of no security concern for LANL/DOE now that, one, the behavior has been intervened with and stopped; two, he is accountable to many; and, three, he is being treated. His prognosis is very favorable." *Id.* at 20. However, the Counselor later testified that he would like to see the Individual continue treatment and complete a significant period of maintenance before the Counselor could say that the Individual established sufficient trust that his situation has been addressed. *Id.* at 25. The Counselor defined "significant period" as a period of eighteen months because it is a well-researched timeframe that "is a really good threshold for feeling confidence" in a person's recovery. *Id.* at 30-31. Notwithstanding, the Counselor stated that he is "confident that this behavior will not recur and that [the Individual] does not pose a risk to [the] government." *Id.* at 28; *see also id.* at 29. The Counselor also stated that he had witnessed the "progress necessary to make [his] observations and recommendations [at the time of the hearing]." *Id.* at 30.

The Counselor then explained that his confidence is "very high" in the Individual's case because of the discoveries he and the Individual made during treatment, the Counselor's belief that the Individual will continue to make improvements in his understanding, and the fact that the Individual has dealt with the shame and embarrassment that resulted from his issue. *Id.* at 34. However, the Counselor also testified that he would feel more confident in his recommendation after the full eighteen months because people who meet that threshold have a "greatly increased chance of being successful." *Id.* at 33.

Next, the EAP Counselor testified. The EAP Counselor first met with the Individual in December 2016. *Id.* at 71. She then referred the Individual to the Counselor because she believed that the Individual should see a state-licensed counselor in addition to the Christian Counselor. *Id.* at 72.

Since then, she has monitored the Individual's progress. *Id.* at 77. The EAP Counselor stated that the Individual is doing extremely well. *Id.* at 75. Furthermore, the Individual has been very remorseful, engaged, and very "open and compliant with [the EAP Counselor's] referrals and counseling." *Id.* at 76. Furthermore, she stated that the Individual's prognosis is "excellent." *Id.* at 77.

The Supervisor and the Christian Counselor also testified on behalf of the Individual. The Supervisor stated that he has directly supervised the Individual for sixteen years. *Id.* at 36. During that period, the two developed a good friendship. *Id.* at 42. The Supervisor rated the Individual's trustworthiness as "[e]xtremely high." *Id.* at 41. The Supervisor testified that the Individual's performance has been otherwise blemish free. *Id.* at 38. The Supervisor also stated that the Individual is clearly remorseful, and the Supervisor believes that the Individual can be trusted to keep his clearance. *Id.* at 39. The Christian Counselor testified that, based on the Individual's progress with counseling, the Individual is "going to [one] hundred percent recover." *Id.* at 62. The Christian Counselor testified that he provided faith-based counseling to the Individual for approximately one year prior to the hearing. *Id.* at 64. During that time, the Individual participated in a 12-step program, read books on dealing with sexual addiction, and voluntarily shared his struggle with other church members to increase his accountability. *Id.* at 57-59.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should not be restored at this time.

The Criterion L concerns center on the Individual's accessing pornographic images on his work computer in 1997 and from 2012 until 2015, despite his knowledge that he was violating DOE policy. In other cases evaluating security concerns arising from viewing pornography on government-issued computers, Administrative Judges have noted some of the following factors in making a determination as to fitness for a security clearance: amount of time elapsed since last accessing pornography; counseling or psychiatric opinions indicating low probability of repeat behavior; remorse of the individual; realization of consequences to position if the individual repeats viewing pornography on a government-issued system; and testimony and other evidence of good character. *See Personnel Security Hearing*, Case No. TSO-0541 (2008); *Personal Security Hearing*, Case No. TSO-0905 (2010).³

The Individual fully admits that he exercised poor judgment by deciding to look at pornography in 1997 and then again between 2012 and 2015. In mitigation, the Individual credibly testified that he has not viewed sexually explicit material on his work computer for over a year leading up to the hearing. Furthermore, the Individual voluntarily sought out and received counseling for his addiction from the Christian Counselor for one year prior to the hearing.

³ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at www.energy.gov/oha.

The Individual also provided substantial evidence to demonstrate his profound remorse and commitment to understanding and solving his addiction. The Individual's testimony indicates that he has been deeply affected by the consequences of his behavior and the entire security and Administrative Review process, and he fully understands the DOE concerns regarding his conduct, and the consequences to his position if he repeats the behavior. The Individual also possesses a deeper understanding of his behavior since the 1997 reprimand, and he has expended significant effort to obtain the appropriate tools to control his addiction.

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 Counselor, Christian Counselor 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 that the Individual has sufficiently mitigated the security concerns related to his sexual addiction.

The Individual's efforts in addressing his problems are laudable. However, I find it significant that the Counselor testified that a period of 18 months of treatment and monitored compliance are a "good threshold for feeling confidence in [the Individual's] recovery", Tr. at 30-31, and the Christian Counselor concurred in this opinion. Tr. at 64. As of the date of the hearing, the Individual has had only three months of counselling with the Counselor.⁴ Given the lengthy period that the Individual has struggled with his problem, and the fact that this was a recurrence of an earlier episode in 1997, I find that the Individual has not been in treatment for the length of time needed for me to have a sufficient level of certainty that his problem is no longer a concern. *See Personnel Security Hearing*, Case No. PSH-16-0087 (2017) (clearance not restored for failure to complete recommended one year treatment program for sexual addiction). Consequently, I do not find that the Individual has fully resolved the Criterion L security concerns raised by the derogatory information cited in the Notification Letter.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criterion L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to resolve the security concerns raised by the Criterion L derogatory information recorded in the Notification Letter. Given this, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the

⁴ I note that the Individual has received counselling from the Christian Counselor for approximately a year as of the date of the hearing. However, while the Christian Counselor provides important faith-based counselling to the Individual, the Christian Counselor is not licensed by the State as a counselor. Tr. at 66.

national interest.” 10 C.F.R. § 710.7(a). Consequently, I find that the Individual’s access authorization should not be restored at this time.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: April 4, 2017