

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

May 27, 2011

DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 2, 2011

Case Number: TSO-1002

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization.

I. BACKGROUND

The individual held a security clearance from 1990 until 2002 while working for government contractors and the federal government. In 2010, his present employer, a DOE contractor, requested DOE access authorization for the individual. Based on issues contained in the individual's security file, the Local Security Office (LSO) conducted a Personnel Security Interview with the individual in September 2010 (the 2010 PSI, DOE Ex. 10). In November 2010, a DOE-consultant Psychiatrist evaluated the individual, and memorialized her findings in a Report of Psychiatric Evaluation (the 2010 Report, DOE Ex. 4).

In December 2010, the LSO issued a Notification Letter to the individual, together with a statement (Enclosure 2) setting forth the information that created a substantial doubt about the individual's eligibility to hold a DOE security clearance. (DOE Ex. 1). Specifically, the LSO identifies information indicating that in November 2010, a DOE-consultant Psychiatrist concluded that the individual met the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) criteria for Adult Antisocial Behavior, which is an illness or condition which causes, or may cause, a significant defect in his judgment or reliability. This diagnosis raises a security concern under 10 C.F.R. § 710.8(h) (Criterion H). Enclosure 2, DOE Ex. 1.

In addition, the LSO finds that the individual has engaged in unusual conduct which has raised concerns under 10 C.F.R. § 710.8(l) (Criterion L) that he is not honest, reliable and trustworthy. In this regard, the LSO alleges that the individual admitted that he altered court documents in order to convince a woman that he was divorced, and that he lied about this at a 2001 Personnel Security Interview (the 2001 PSI). The LSO also alleges that the individual initially failed to disclose his complete history of extramarital affairs at his 2010 psychiatric assessment, and that at his 2010 PSI, he admitted that he paid hush money and attempted to intimidate another DOE employee in an effort to keep her from disclosing their affair. Finally, the LSO alleges that he has engaged in criminal conduct by being married to two women at the same time. *Id.*

In January 2011, the individual, who is represented by counsel, requested a hearing (hereinafter “the hearing”) to respond to the concerns raised in the Notification Letter. On February 2, 2011, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter in March 2011, I received testimony from eight persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual testified and presented the testimony of a Psychiatrist who evaluated the individual for diagnostic purposes (the individual’s Evaluating Psychiatrist). In addition, the individual presented the testimony of his supervisor, a current co-worker, a former co-worker, a long-time business associate/co-worker, and an employee of his church. Discussion at the hearing centered on the incidents in the individual’s life that formed the basis for the LSO’s Criteria H and L concerns, as well as the individual’s behavior in the workplace and in his social life.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing 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). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security test” for the granting of 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).

III. ANALYSIS OF TESTIMONY AND FINDINGS

A. Criterion H Concerns

In her 2010 Report, the DOE-consultant Psychiatrist concluded that the individual met the DSM-IV-TR criteria for Adult Antisocial Behavior, which is a mental condition which causes, or may cause, a significant defect in his judgment or reliability. As a basis for this diagnosis, the DOE-consultant Psychiatrist found that although the individual was married from 1978 until 2009, he engaged in four extra-marital affairs during the period from 1992 until 2009, and he admitted that the first, second and fourth of these affairs included extra-marital sexual relations. With respect to the third affair, the individual admitted to the DOE-consultant Psychiatrist that he forged a divorce decree in an attempt to convince the woman that he was divorced. With respect to the fourth affair, the individual admitted that he entered into a bigamous marriage with his second wife because she was uncomfortable having him in her house with her teenage daughter. The bigamy ended when the individual's first wife discovered the bigamy and divorced him. 2009 Report at 7-8. The DOE-consultant Psychiatrist found that individual displayed a "series of similar self-serving deceitful behavior from 1990 until 2009, a span of almost two decades in his mid-adult life." *Id.* at 11. She concluded that the individual did not meet the criteria for a diagnosis of Antisocial Personality Disorder because his deceitfulness and self-serving lies appear to have been circumscribed to only one area of his life (infidelities) and therefore cannot be considered pervasive. *Id.* However, she found that his deceitfulness concerning his infidelities over several years is clinically significant and supported a diagnosis of Adult Antisocial Behavior. She concluded that the individual's adult antisocial behavior predisposes the individual to breaking the law or being unable to follow rules in general, as evidence by his extra-marital affairs, his forging of a legal document, and his bigamy. *Id.* at 11-12.

The individual contested the DOE-consultant Psychiatrist's finding that he has a mental condition that may cause a significant defect in his judgment and reliability, and his Evaluating Psychiatrist supported the individual's contention.

1. The Individual's Testimony Concerning his Affairs, his Bigamous Marriage, and his Current Marital Relationship

At the hearing, the individual testified that he married his first wife in 1978 and that they raised a family. He stated that over time, he and his first wife grew apart because he was away from home on business and had a lot of outside interests, and she had her own job. He first became involved in an extra-marital affair in 1992. TR at 42-43, 51. He stated that his first affair began after he and a secretary in his office were both fired due to the misuse of work e-mails by other employees. He testified that his first wife became aware of this affair before it ended in early 1993. TR at 50-51. He stated that in 1999, he began a second affair with another employee at the DOE facility where he was employed, and that this affair lasted for several years. TR at 52. He testified that his first wife became aware of the affair and asked him to end it, but that he chose to continue the affair. He stated that the affair "wasn't [a] priority, and it wasn't something that happened very often, so it just continued to perk along." TR at 53. During this period, he attempted to avoid a "final blowup" with his first wife, who he described as "content to let things work the way they were working." *Id.*

The individual stated that in 2000, he accepted a job and moved to another state, while his first wife remained behind to permit the children to finish junior and senior high school. He stated that while he and his first wife did not see each other very often, they did not consider themselves in a marital separation. TR at 55. He stated that he met the woman involved in his third affair on a business trip, and that she then visited him in the city where he was living. TR at 56-57. He stated that the relationship was never consummated, but that it was more than just a platonic friendship. TR at 89. He stated that he told the woman that he was divorced, and that she asked to see his divorce decree. He stated that he then “dummied up” a divorce decree and showed it to her. TR at 60. He testified that he did not create the false divorce decree in order to entice the woman into a sexual relationship, but to support the story he had told her, to maintain a long distance relationship with her, and to avoid a “blowup”. TR at 61.

However, while staying at his residence during a visit, the woman discovered that the individual was still married and was involved in another affair. TR at 59-60, 64. She confronted the individual and threatened to tell his first wife. The individual then gave her a check for \$400 to cover her expenses and her inconvenience in visiting him.

But I called it hush money because I don't know any other way to phrase that. I mean, she was raising Cain in my condo. She wasted all that money to come out there and see me, and I turned out, you know, not be telling her the truth. So I was just going to give her what I could give her and let her go back home.

TR at 62. He stated that the woman subsequently called him, told him that she had taken the fraudulent divorce decree and other personal documents from his apartment, and threatened to provide the documents to his first wife and his girlfriend. The individual stated that he pleaded with her to return the documents, and when she stopped taking his calls, he made statements to “another lady in her office” to relay to the woman. TR at 64. He said that one statement was a warning that sending the documents would affect her security clearance, and the other statement was that the woman would have “blood on her hands” if she sent the documents. *Id.* The individual explained that he believed that if security learned that the woman had stolen documents from his apartment, it would reflect poorly on her security clearance. The other comment was intended to convey that the individual's family “basically would be destroyed through her actions.” TR at 65. The individual denies that the statements were intended as a threat of “any kind of harm, or really the loss of her clearance.” *Id.*

The individual stated that the co-worker reported his statements to security, and the individual was interviewed about his extra-marital affairs. TR at 65-66. He stated that at his 2001 PSI, he lied about the fraudulent divorce decree when he denied that he altered court documents. He said that at that time he “wasn't sleeping much” because of his problems with the woman, his job, and his family. TR at 77. He said that he lied because he wanted “to just make it go away as quickly as I could.” *Id.* He said he did not realize that the fraudulent document would show up at his divorce hearing. *Id.* He admitted that the lie “was a stupid thing to do” and asserted that he “tried to make it right” when he admitted to creating the fraudulent divorce decree at his 2010 PSI. TR at 77-78. He asserted that he would not lie again in such a situation because he has “learned his lesson about that” and because he is a different person than he was ten years ago. TR at 78.

The individual stated that after his employer was made aware of these issues in 2001, the individual concluded that his employer had lost faith in him, and that he chose to resign and to move home. TR at 66. The individual stated that as a result of receiving a copy of the fraudulent divorce decree, his marriage became very tenuous, and there was little communication with his first wife. He testified that he was trying to avoid the conflict that comes with filing for divorce. TR at 68.

The individual testified that in 2005, he met his second wife. He stated that it was a business relationship for quite a while, and then it turned into a personal relationship involving dating, and eventually into a real affair. TR at 69. The individual stated that his second wife knew that he was married, but she would not live with him outside of marriage. In December 2007, he married his second wife without divorcing his first wife, and he remained married to both women for more than a year. He stated that he would live with his first wife only one or two days a week, because he was working in another city. He stated that his first wife discovered the situation at Thanksgiving 2008, and shortly thereafter filed for divorce, which was finalized in 2009. TR at 69-73. The individual stated that engaging in bigamy was “the most stupid thing I’ve ever done”, but that his overriding concern was to keep both women content.

You know, in the back of my mind I figured it was probably criminal, but that was, to me, not as important as keeping these two women happy.

TR at 71-72.

The individual testified that he remains married to his second wife, and that they have a happy and committed relationship. He stated that, aside from his first wife, he has had no relationships with other women since he met his second wife. He testified that he and his second wife are active in church and mission activities. He asserted that the “phase of my life when I needed . . . those relationship[s] outside my marriage [are] over and done with.” TR at 75.

The individual testified that since the 2009 divorce, he has maintained good relationships with his children, he and his first wife “are still civil to each other”, and his second wife and her family are happy. TR at 71. However, he presented no corroborative testimony from any of these persons. Most of his witnesses were supervisors and co-workers whose knowledge of his marital issues was indirect and limited. The only witness with any direct knowledge of his marriage was the technical director of the individual’s church. He testified that he has seen the individual and his wife at church services almost every weekend for the last three years. He described them as solid, stable, Christian people, and he stated that he had no knowledge of any inappropriate, extra-marital conduct by the individual. TR at 44-49. I find this testimony to be of little value in assessing the individual’s honesty and fidelity in his current marriage. The individual’s supervisor, his long-time business associate/co-worker, his former co-worker and his current co-worker all testified that the individual is personable, a good worker, and that they trust his honesty and judgment in the workplace. None of these professional associates indicated

any direct knowledge of the individual's personal life and social contacts. TR at 10-21, 22-32, 33-41 and 81-86.¹

2. Opinions of Medical Experts Concerning the Individual's Mental Health and Prognosis

The individual's Evaluating Psychiatrist testified that he evaluated the individual in March 2011.² He stated that his evaluation of the individual led him to agree with the DOE-consultant Psychiatrist that the individual does not have a psychiatric disorder as they are outlined in the DSM-IV-TR. However, he disagreed with the DOE-consultant Psychiatrist's conclusion that the individual met the DSM-IV-TR criteria for Adult Antisocial Behavior, a mental condition that could affect the individual's judgment and reliability. The Evaluating Psychiatrist stated that the examples of Adult Antisocial Behavior provided in the DSM-IV-TR, *i.e.*, professional thieves, racketeers and dealers in illegal substances, indicate ongoing criminal activity. He opined that the individual's single instance of criminal bigamy was insufficient to establish a pattern of failing to conform to social norms with respect to lawful behavior. TR at 133-136. He stated that the individual's reported involvement in his children's activities, his regular payment of alimony to his first wife, and his current involvement in mission activities are "just things you don't see with anti-social behavior." TR at 138.

The Evaluating Psychiatrist testified that the individual's deceitful behavior took place because he was conflicted about how to deal with his marital problems. TR at 135-136. He stated that the individual wanted calm and peace with his first wife, and he wanted to maintain a relationship with his children that would be threatened by a divorce, so the individual was unable to initiate a divorce. TR at 137-138. The Evaluating Psychiatrist acknowledged that the individual had deficits in judgment in the past, particularly in the his relationships with women. He stated that he believed that the individual now had learned from experience that his fear of divorce was unfounded. TR at 141. He opined that the individual also is less likely to engage in deceitful behavior with women because he is now in a marriage relationship that he finds more satisfying, and he is less likely to get lonely and seek out other women. TR at 146.

After listening to the testimony at the hearing, the DOE-consultant Psychiatrist stated that she remained confident of the accuracy of her diagnosis under the DSM-IV-TR that the individual has a mental condition, Adult Antisocial Behavior, that causes him to engage in deceitful behavior in certain circumstances. TR at 154-156. She stated that the extreme examples of anti-social behavior in the DSM-IV-TR cited by the Evaluating Psychiatrist were enumerated as examples because they are blatant and easy to understand, but she believed that viewing the individual's pattern of deceitfulness as anti-

¹ The individual also submitted letters of recommendation from professional associates, copies of his resume, performance appraisals, and professional awards. *See* Individual's Exhibits A to N. These exhibits support the individual's assertion that he is a talented employee with a very good professional reputation.

² A March 28, 2011, letter from the Evaluating Psychiatrist indicates that his interview with the individual lasted for two hours and thirty seven minutes and was focused on understanding the individual's behavior primarily as it related to his interactions with women. It also indicates that the Evaluating Psychiatrist reviewed the Notification Letter and the DOE-consultant Psychiatrist's Report. *See* Individual's Exhibit O. The Evaluating Psychiatrist testified that he did not interview the individual's second wife. TR at 153.

social behavior is an appropriate clinical interpretation. TR at 156-157. She testified that she sees the individual as in need of therapy to address his “long-standing, unhealthy defense mechanisms” that have caused him to lie and to commit bigamy in order to avoid marital conflict.

The DOE-consultant Psychiatrist stated that she was not convinced that the individual’s marriage to his second wife has lowered the risk that the individual will engage in future deceitful or illegal behavior. She noted that the testimony of the individual indicated that his second wife persuaded the individual to marry her when she knew that he was still married to his first wife and would be committing bigamy. TR at 160. She also noted that the Evaluating Psychiatrist stated in his letter that the individual would benefit from counseling to address conflict avoidant behavior. TR at 158, *citing* Individual’s Exhibit O at 3. She opined that in the absence of therapy to address his maladaptive behaviors, she could not say with clinical confidence that those behaviors are less likely to occur in the future. TR at 159. The DOE-consultant Psychiatrist acknowledged that since the individual’s first wife discovered his bigamy in 2008, the individual does not appear to have been engaged in deceitful behavior. She stated that she did not consider two and one-half years of apparent honesty and fidelity as sufficient to lower the risk of the individual relapsing into a long term pattern of marital deceitfulness that spanned from 1992 until 2008. TR at 189. She also noted that the individual’s job involves a physical separation from his second wife, which is similar to the situation that prevailed during his first marriage. TR at 191.

3. The Individual’s Current Mental Condition and his Risk of Exercising Poor Judgment in the Future

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual has been properly diagnosed with a mental condition. *See* 10 C.F.R. § 710.27. Hearing Officers properly give deference to the expert opinions of psychiatrists and other mental health professionals regarding these diagnoses. *See, e.g., Personnel Security Hearing, Case No. TSO-0401 (2006)*. In cases like this one, where the medical experts disagree concerning the diagnosis of a mental condition, the DOE Hearing Officer must make a determination based on the available evidence.

As an initial matter, I find that the evidence presented by the individual at the hearing was not sufficient to support his assertions that his 2009 divorce from his first wife will enable him to avoid future deceitful behavior in his marriage relationship, and that his second marriage is happy and stable. As noted above, the supporting evidence and testimony at the hearing largely addressed the individual’s reputation in the workplace, and did not address the concerns arising from the individual’s pattern of deceitful and illegal behavior in his married life. At our March 15, 2011, conference call, I advised the individual’s counsel that he should seriously consider presenting the testimony of the individual’s second wife to address the individual’s honesty and reliability. *See also* March 28, 2011, e-mail to the individual’s counsel. In the absence of her testimony, I find that the individual has not sufficiently supported his contentions that his second wife

was aware the he remained married to his first wife for more than a year after their marriage, or that the individual is being honest in his second marriage.

As discussed above, at the hearing, the DOE-consultant Psychiatrist reaffirmed her initial diagnosis that the individual suffers from a mental condition that has resulted in deceitful behavior over an extended period of time. The individual's Evaluating Psychiatrist disagreed with the DOE-consultant Psychiatrist's diagnosis and argued that the individual's deceitful behavior was a marriage-related issue that was resolved by his 2009 divorce. In this instance, I find that the record provides stronger support for the DOE-consultant Psychiatrist's position that the individual suffers from a mental condition that makes him vulnerable to deceitfulness and illegal activity. Not only did the individual repeatedly deceive his first wife about his extra-marital affairs, he also admitted hiding his marital status from a woman with whom he was romantically involved. He later made intimidating statements and a monetary payment in an effort to prevent her from disclosing the affair. I also find that the individual's behavior in forging a divorce decree and later denying this act to DOE Security, as well as his substantial period of bigamy, was not given sufficient weight by the individual's Evaluating Psychiatrist. Forging a document purporting to contain his first wife's signature and altering her legal status is a serious matter, and denying this action at his 2001 PSI violated his commitment to the DOE and subjected him to criminal sanctions. Nor do I find that the Evaluating Psychiatrist provided a convincing basis for his conclusion that the individual's acts of poor judgment are unlikely to occur as a result of his divorce and his current marriage. I share the concerns of the DOE-consultant Psychiatrist about the judgment of his second wife in allegedly insisting that the individual commit bigamy, and I note that the individual's assertion that she was knowledgeable about his ongoing marriage is unsupported. Finally, I agree with the DOE-consultant Psychiatrist that the individual has not yet engaged in the counseling necessary to address his emotional issues and patterns of deceit. Accordingly, I find that the individual has not yet mitigated the DOE's Criterion H concerns. *See* Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (*Adjudicative Guidelines*), Guideline I, Paragraph 29, at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

B. Criterion L Concerns

As stated above, the Notification Letter also sets forth the following Criterion L security concerns: (i) the individual stated at his 2001 PSI that he did not alter a court document (*i.e.*, forged a divorce decree), and at his 2010 PSI, he admitted that the earlier statement was false and that he did indeed alter the court document; (ii) he initially failed to disclose his complete history of extramarital affairs at his 2010 DOE psychiatric evaluation; (iii) in 2001, he paid a woman \$400 in "hush money" and later attempted to intimidate her into not disclosing their affair; and (iv) at his 2010 PSI, he admitted to having been married to two women at the same time even though he knew that this activity was illegal. Based on the DOE-consultant Psychiatrist's testimony that the individual's omissions to his history at their interview may have been oversights by the individual, I find that the second Criterion L concern has been mitigated. TR at 177-178. However, I find that the other listed actions raise serious Criterion L concerns that have not been resolved. With respect to the false statement made at the 2001 PSI, I note that

the individual admitted to forging the divorce decree at his 2010 PSI only after the LSO informed him that the LSO was in possession of the forged document. DOE Exhibit 10 at 26-30. Accordingly, this forced admission does not mitigate his earlier falsification. *See Adjudicative Guidelines*, Guideline E, Paragraph 17(a).

As discussed above, the individual has not presented corroborative testimony and evidence to confirm his assertions that he is now in a stable marriage relationship that is free of deception and where he is not motivated to engage in extra-marital activity. Nor has he engaged in therapy or counseling that both his Evaluating Psychiatrist and the DOE-consultant Psychiatrist have indicated would be helpful in addressing the emotional issues that have resulted in his unusual conduct and illegal activity in the past. Accordingly, there is no substantial evidence in the record to confirm that the individual is now demonstrating greater emotional stability in his family life, and has established a therapeutic relationship that could assist him in dealing with future domestic conflicts in a responsible manner. Therefore, I cannot find that the past conduct that gave rise to the Criterion L concerns is unlikely to recur, and that the individual has successfully changed his behavior. *See Adjudicative Guidelines*, Guideline E, Paragraph 17(g).

IV. CONCLUSION

For the reasons set forth above, I find that the individual was properly diagnosed with Adult Antisocial Behavior, and that this mental condition is subject to Criterion H. Further, I find that this derogatory information under Criterion H has not been mitigated sufficiently at this time. I further find that the individual has not mitigated the DOE's Criterion L concerns. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: May 27, 2011