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July 13, 2011

DECISION AND ORDER

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 3, 2011

Case Number: TSO-1014

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXX (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 set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.¹

I. Background

The individual is employed by a Department of Energy (DOE) contractor and has held a security clearance at the request of his employer since 1998. DOE terminated his clearance in 2005, and then reinstated it in 2007 after a favorable psychiatric evaluation. In July 2010, the individual's wife filed a restraining order against him. He reported the incident to the local security office (LSO) and the LSO conducted a personnel security interview (PSI) with the individual in August 2010. The PSI did not resolve the security concerns and the individual agreed to be evaluated by a DOE consultant-psychiatrist.

In November 2010, a DOE consultant-psychiatrist (DOE psychiatrist) interviewed the individual and concluded that the individual met the criteria for Borderline Personality Disorder (BPD), as set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revised (DSM-IV-TR), and that he suffered from an illness or mental condition which causes or may cause a significant defect in his judgment or reliability.² The

¹ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

² Borderline Personality Disorder is "[a] pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by 5 (or more) of the following: (1) Frantic efforts to avoid real or imagined abandonment; (2) a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation; (3) identity disturbance: markedly and persistently unstable self-image or sense

LSO suspended his access authorization and then informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (December 2010). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (h) and (l) (Criteria H and L).³ As for Criterion H, the Notification Letter referred specifically to: (1) the diagnosis of the DOE psychiatrist that the individual suffers from Borderline Personality Disorder (BPD), an illness or mental condition which causes or may cause a significant defect in judgment or reliability; and (2) a July 2010 diagnosis by his treating psychologist that he suffers from BPD. As regards Criterion L, DOE noted that: (1) the individual admitted in his August 2010 PSI that he had contacted his spouse in violation of an active restraining order against him, and (2) he admitted in a November 2010 psychiatric evaluation that, in violation of the restraining order, he contacted his spouse every two weeks and had visited her at her place of employment three weeks prior to the evaluation. Notification Letter. According to the LSO, this tends to show that he has engaged in unusual conduct or is subject to circumstances which furnish reason to believe that he is not reliable or trustworthy.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing the individual, who was represented by counsel, testified on his own behalf and also called seven witnesses. DOE counsel called the DOE psychiatrist as a witness. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the parties during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." DOE exhibits are numbered, and the individual's exhibits are lettered.

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with

of self; (4) impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating); (5) recurrent suicidal behavior, gestures, or threats, or self-mutilated behavior; (6) affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days); (7) chronic feelings of emptiness; (8) inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights); (9) transient, stress-related paranoid ideation or severe dissociative symptoms. DSM-IV-TR at 706-710.

³ Criterion H concerns information in the possession of the agency that 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 judgment or reliability. 10 C.F.R. 710.8 § (h). DOE invokes Criterion L when it is in possession of information that indicates that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy or which furnish reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. 10 C.F.R. § 710.8 (l).

the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard 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).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. 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 After due deliberation, I find that the individual’s access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual first sought counseling in high school to deal with his feelings after a failed relationship. After high school, he attended college and married his first wife in 1993. Ex. 5 at 2. He became depressed by work-related issues in 1996, and began counseling again. In 1997, his counselor referred him to a psychiatrist for antidepressant medications, which he took for a few months until he experienced negative side effects. In 2000, he began having marital problems and moved out of his home. *Id.* In December 2000, he started taking an antidepressant but stopped after three months. He divorced his wife in March 2001. *Id.* In September 2001, the LSO received an incident report that the individual was arrested for battery against a household member, his ex-wife. In October 2001, a PSI resolved the security concern when it was determined that the ex-wife’s boyfriend had beaten her and the charges were dropped.

In July 2003, the individual married his second wife. *Id.* at 3. In June 2005, his wife asked for a divorce and the individual began seeing a counselor for marriage problems. The counselor diagnosed a depressive disorder and he was prescribed an antidepressant. Ex. 5 (2007 Report) at 3. In July 2005, he was divorced after two years of marriage. The night that he signed the divorce papers, he took an overdose of pills and was admitted to a local hospital. *Id.* at 4. In August 2005, he met with a psychiatrist who noted the individual’s suicide attempts. On September 1, 2005, the individual received a restraining order issued by his second ex-wife for alleged telephone and email harassment. *Id.* He took an

⁴ The applicable factors are: “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 of the individual at the time of the conduct; the voluntariness of the 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 continuance or recurrence; and other relevant and material factors.” 10 C.F.R. § 710.7(c)

overdose that night and was taken to a local hospital and then transferred to a psychiatric hospital. He was voluntarily admitted to the psychiatric hospital and stayed there for five days, where he was diagnosed with Major Depressive Disorder. *Id.* DOE terminated his clearance prior to resolution of the incident on September 7, 2005. He began to participate in Al-Anon in October 2005.⁵ In January 2006, he began weaning himself off antidepressants. *Id.* at 5. In early 2006, after a fitness for duty evaluation, he was released to full duty with no restrictions. *Id.* at 5. After a May 2007 PSI and a favorable August 30, 2007, psychiatric evaluation by a DOE psychiatrist, DOE reinstated his clearance in October 2007. Ex. 4 at 10. The DOE psychiatrist found that the individual had not exhibited any symptoms of depression in the two years prior to the evaluation in August 2007. Ex. 5 at 8.

In October 2009, the individual met a woman on a computer-dating site and they married in February 2010. This was the sixth marriage for his wife. Ex. 4 (2010 Report) at 4. The individual began to display anger and jealousy on their honeymoon, and his wife consulted a therapist on her return. Tr. at 226-229; Ex. 12 at 11-14. Within a few months, his wife considered leaving him because of his anger. Ex. 12 at 14. In May 2010, she left the home for two weeks on a work assignment. During her trip, the individual began sending her emails—some told her he loved her and some told her that he hated her. Ex. 12 at 16, 20; Tr. at 232. He threatened to harm himself if she did not return. *Id.* On June 3, 2010, the individual was arrested for battery against a household member. Ex. 9. His wife alleged that he slammed his fist into the walls of their home, banged his head into the wall and shoved her. She also alleged that he abused her verbally and sent emails threatening to kill himself and to destroy her belongings. He had reported her car as stolen, cancelled her phone, changed passwords on their bank account, slammed her dog into a door, and posted inappropriate items on her Facebook account. Report at 5; Ex. 12 at 32-33. His wife left the home and moved in with a friend. On June 7, 2010, the individual began to see a psychologist at the request of his wife. Report at 5; Ex. 12 at 21. He had four one-hour sessions with the psychologist, who diagnosed BPD. The psychologist referred him to a psychiatrist for evaluation regarding medications. Ex. 4 (Report 2010) at 6. The psychiatrist concurred with the diagnosis of BPD and prescribed medication to treat the symptoms of angry outbursts and irrational thinking. *Id.*

On June 23, 2010, the individual's wife filed a temporary protective order against him alleging physical and emotional abuse, and that he had threatened to kill himself. Ex. 12 at 21. The individual admitted that he had destroyed her computer and backup storage drive which contained an important project. Tr. at 206, 235; PSI 2010 at 16. On June 30, 2010, the individual had a final meeting with his psychologist, who referred him to a counselor who specializes in a therapy technique for BPD. Ex. 12 at 35. The protective order was granted at a hearing on July 8, 2010. The protective order, which expires on July 8, 2011, requires him to complete counseling and to take medications prescribed by the psychiatrist. Ex. 4 at 7; Ex. 9. The individual began weekly one-hour sessions with the counselor and weekly group session. Ex. 12 at 37. He continued attending Al-Anon and sometimes Co-Dependents Anonymous (CODA), a 12-step program similar to Al-Anon.

⁵ The individual's father and first wife were alcoholics.

On November 18, 2010, a DOE psychiatrist conducted an evaluation of the individual and concluded that he suffered from BPD, a condition that causes or may cause a significant defect in his judgment or reliability. Ex. 4 (2010 Report) at 13. During the evaluation, the individual acknowledged violating the protective order by contacting his wife via text, email, and telephone every two weeks. Ex. 12 at 46-52. He was still troubled by thoughts of jealousy regarding his wife. He also admitted that he had visited her place of employment three weeks prior to the DOE psychiatric evaluation to talk to her about a utility bill and he became upset by the discussion. Ex. 4 at 9. The DOE psychiatrist concluded that the individual's prognosis was guarded. *Id.* at 13.

B. The Notification Letter and the Security Concerns at Issue

To support Criterion H, the LSO relied on the DOE psychiatrist's report and the diagnosis of the individual's treating therapist that the individual suffers from Borderline Personality Disorder. Notification Letter; Ex. 4 at 12-13. The DOE psychiatrist further opined that this condition causes or may cause a significant defect in the individual's judgment or reliability. A mental condition such as BPD can impair a person's judgment, reliability and trustworthiness, all of which can raise questions about an individual's ability to protect classified information. See Guideline I, Psychological Conditions, *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Assistant to the President for National Security Affairs (December 29, 2005) (Guidelines) ¶ 28(a)-(b).

To support the allegations under Criterion L, the LSO relies on information that the individual violated a protective order by contacting his spouse every two weeks by text, phone and email, and by visiting her place of employment. Ex. 4 at 8; Ex. 12 (2010 PSI) at 51-52, 56-57; Ex. 10. These events create doubt about his judgment, reliability, and trustworthiness and question his ability or willingness to comply with laws, rules and regulations. See Guideline J, Criminal Conduct, ¶ 30. As set forth above, the LSO's concerns are valid and I find that the LSO properly invoked Criteria H and L.

C. Hearing Testimony

1. Character Witnesses

The individual's wife, three colleagues and Al-Anon sponsor testified that the individual was an honest, hard-working person. The colleagues considered him to be professional, level-headed, and conscientious. Tr. at 80-100; 139-153. They described him as reserved and testified that he did seem sad after he announced his divorce. They have not seen him angry. His sponsor said that he has seen positive change in the individual since they have been working together. Tr. at 183-196. The individual calls his therapist to discuss his actions and he does not act spontaneously. All of the witnesses remarked that the individual in recent months has seemed happier and less distracted.

The individual's wife testified that they had a difficult relationship in the past, and admitted that she had filed a protective order against him. Tr. at 206-208. She noted that they had permission to email each other regarding the house and health matters, and she actually initiated contact with him. Tr. at 242. In fact, she would have withdrawn the protective order

earlier but was not sure how to achieve this. Tr. at 210, 246-247. She testified that she loves her husband, is now seeing a marriage counselor, and wants her marriage to work. Tr. at 244. She has noticed that he is much calmer now and she has not seen any anger since he has started treatment for BPD. Tr. at 208. In fact, he recently helped her to fund a trip abroad to do a service project and seemed to adjust well to her departure, absence and return. *Id.* at 203. She has changed also. *Id.* at 219.

2. The Individual's Expert Witnesses

The individual called two expert witnesses: (1) his treating therapist and (2) a psychologist who had treated him in the past. The psychologist testified that in 2005, she diagnosed him with major depressive episode, recurrent, and did not consider him "squarely in borderline personality disorder now." Tr. at 260-261. She opined that he has a dependent personality. She counseled him from June 2005 to May 2009 and they worked on relationship issues, abandonment, and impulse control, and choosing a healthier mate. She acknowledged his problems with intimate relationships with women, but maintained that his problems were restricted to his romantic life. She did not believe that his condition impaired his judgment, and considered him very honest and forthright. Tr. at 263.

The current therapist testified that the individual has mild BPD and has a depressive personality component, with a lot of anxiety. Tr. at 22. The therapist has specialized training in dialectical behavior therapy, which is a three-stage therapy that treats BPD. *Id.* at 22-23. The individual had been attending skills class for one year and also attends weekly individual counseling sessions and telephone coaching sessions with the therapist. According to the therapist, the individual is very conscientious, has only missed two classes and faithfully completes his homework. Tr. at 29-31. The individual is in the first of the three phases of dialectical behavior therapy. *Id.* at 54. The therapist concluded that the individual's problems are restricted to his romantic relationships with women and that he is not violent. He testified that the individual is devoted to his wife, and that the contact between the two that occurred while the protective order was active was initiated by the individual's wife. *Id.* at 34-44. He opined that the individual's present prognosis is good and that his marriage will be enhanced by his therapy. *Id.* at 71.

3. The Individual

The individual testified that he takes blame and responsibility for the actions that caused the situation resulting in his wife filing for a protective order in June 2010. Tr. at 160. He admits that he reacted badly when his wife left for a two-week work assignment. However, as evidence of his rehabilitation, he notes that he reacted positively to her most current trip, in February 2011, when she was overseas for three months. *Id.* at 120-125. He paid for the trip and used the skills that he is learning in therapy to deal with her absence. *Id.* He attends a church, rides a bike, enjoys concerts and movies, and practices meditation to help him with stress tolerance. His last suicide attempt was in 2005, and he stopped smoking three months prior to the hearing. *Id.* at 134. His family is very supportive of his treatment program, as is his wife. *Id.* at 164-166. He meets with his sponsor weekly to talk, attends CODA once a week, and attends Al-Anon once a week. Although he loves his

wife, he is confident that if she left him, he would be fine and he would be able to cope with her absence. *Id.* at 161-163.

4. The DOE Psychiatrist

The DOE psychiatrist was present during the entire hearing and testified at the end after observing all of the witnesses. *Tr.* at 302-335. At the hearing, he testified that the diagnosis of BPD was still valid, but that the individual's prognosis has improved from guarded to fair. *Id.* at 319. He said that in the five months since he completed the report of his psychiatric evaluation, there have been no dramatic changes in the individual's case, and the individual continues to improve slowly. *Id.* at 303. He disagrees with the opinion of the individual's therapist that the individual has a mild case of BPD; rather he would consider it a moderate case because the individual had made at least one suicide attempt, his last two wives had filed protective orders against him, he had admitted himself as an inpatient at a psychiatric facility in 2005, and he had exhibited a delusional level of jealousy. *Id.* When he first evaluated the individual in 2007, he considered a diagnosis of BPD rather than depression, because the two diagnoses overlap. However after the individual had another episode with the classic signs of BPD—i.e., irrationality and extreme anger after a break-up—he was comfortable changing his diagnosis to BPD. *Id.* at 308-309. He noted that it is harder to give a favorable diagnosis to a person who suffers from BPD. Thus, although he concluded that the individual is handling his disorder “exceptionally well,” the DOE psychiatrist testified that the individual's prognosis is fair because BPD is a difficult disorder, and the individual's marriage is still in its early stages—e.g., the couple have been separated for 10 months and are not living together.

The DOE psychiatrist testified that it was too early to determine how the disorder will play out because BPD is a long-term disorder that is slow to develop, and the individual is still in the early stages of the challenge of an intimate relationship. When asked to comment on testimony from other witnesses that the individual's problems were restricted to his romantic relationships and did not spill over into the workplace, the DOE psychiatrist explained that security concerns are broader than the workplace, and therefore the individual is still subject to a new episode. *Id.* at 316-317. Thus, he considered the individual's prognosis to be fair, with a medium probability of recurrence. He was impressed with the couple's commitment to each other and to making their marriage work. *Id.* at 314. Nonetheless, he opined that it is too early to conclude that the individual's condition is in remission or under control—to do so, the individual must demonstrate a period of time with no episodes, and a stabilizing marriage will be important in this effort. *Id.* at 319-324.

D. Mitigation of Security Concerns

After a review of the record, I conclude, for the following reasons, that the individual has not mitigated the security concerns related to Criterion H and Criterion L.

1. Criterion H

At the time of the hearing, the DOE psychiatrist and the individual's treating therapist agreed that the individual suffered from BPD. His treating therapist specialized in a type of behavioral therapy designed for BPD, and he testified credibly that the individual was very conscientious in following the treatment plan. Thus, the individual provided testimony and evidence that has demonstrated ongoing and consistent compliance with the treatment plan designed by his therapist, a mitigating factor under the Guidelines. See Guideline I, ¶ 29 (a). The therapist maintained that the individual's prognosis is favorable. Nonetheless, although I found the individual and his therapist very credible, I am persuaded by the testimony of the DOE psychiatrist that BPD is a long-term disorder and that the individual is still in the early stages of progress towards remission. The testimony of the individual's therapist—that after one year of therapy he is still in Stage One of a three-stage program designed to control BPD—also supports the prognosis of the DOE psychiatrist. The DOE psychiatrist has opined that the individual's BPD is not in remission and that his prognosis, although improved since the November 2010 psychiatric evaluation, is only fair at this time. *Id.* at ¶29 (c). The DOE psychiatrist explained that the individual must demonstrate time without any episodes to prove that his condition is in remission or under control. His last episode was 11 months prior to the hearing and, according to the record, the individual has gone longer periods of time between episodes. Therefore, I conclude that the individual has not mitigated the Criterion H concerns regarding the diagnosis of BPD.

2. Criterion L

To resolve a Criterion L concern arising from illegal conduct, an individual must show rehabilitation, including a passage of time without recurrence of the criminal activity. See Guideline J, Criminal Conduct, ¶32(d) (evidence of successful rehabilitation, including the passage of time without recurrence of criminal activity, may mitigate a security concern regarding criminal conduct). Even though the individual's wife initiated contact with him while the protective order was in effect, the individual admitted that he maintained contact with his wife in violation of the order up to the day before the hearing, when the order was dismissed. See *Personnel Security Hearing, Case No. TSO-0956 (2010)* (Criterion L concern not resolved when most recent criminal conduct occurred within the past year). Although the individual has acknowledged the behavior that caused the security concern, admits he was wrong, and has taken positive steps to alleviate the stressors and circumstances that caused the behavior, his BPD is not yet in remission or under control, according to the DOE psychiatrist. Therefore, I cannot find that the behavior is unlikely to recur. See Guideline E, Personal Conduct, ¶ 17 (d) (conduct involving questionable judgment may be mitigated if the individual acknowledges the behavior and then takes positive steps or obtains counseling to change that behavior and the behavior is unlikely to recur). Therefore, I conclude that he has not mitigated the security concerns regarding Criterion L.

III. Conclusion

As explained in this Decision, I find that the LSO properly invoked 10 C.F.R. § 710.8 (h) and (l). After carefully reviewing the testimonial and documentary evidence in a common-sense manner, I find that the individual has not presented adequate mitigating factors for the Criteria H and L concerns. Thus, in view of the criteria and the record before me, I 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 at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: July 13, 2011