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

In the Matter of: Personnel Security Hearing)
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Filing Date: March 30, 2018) Case No.: PSH-18-0030
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Issued: June 28, 2018

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In July 2017, the individual self-reported that he had been arrested and charged with battery on a peace officer; assault against a household member; resisting, evading or obstructing an officer; and operations of vehicles on approach of authorized emergency vehicles. Ex. 9. He subsequently reported that a restraining order had been issued against him. Ex. 8. The local security office (LSO) conducted a Personnel Security Interview (PSI) with the individual in October 2017. Ex. 14. In response to information gathered at the PSI, a DOE consulting psychologist evaluated the individual. Ex. 10.

Because the psychologist’s evaluation raised unresolved security concerns, the LSO informed the individual in a Notification Letter dated February 21, 2018 (Notification Letter), that it possessed

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.

reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline I (psychological conditions) and Guideline J (criminal conduct) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted 17 numbered exhibits (Exhibits 1-17) into the record and presented the testimony of the DOE psychologist. The individual tendered two exhibits, labeled Exhibits A and B, and presented the testimony of six witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.”, followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring 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 evidence 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guidelines I and J of the Adjudicative Guidelines. Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b). With respect to Guideline I, the LSO

relied upon the DOE psychologist's conclusion that, pursuant to the Diagnostic and Statistical Manual of Mental Health Disorders, Fifth Edition (DSM-5), the individual met the criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood; Other Specified Obsessive Compulsive Disorder: Obsessional Jealousy; and Unspecified Disruptive, Impulse-Control, and Conduct Disorder. Ex. 1 at 1. The LSO cited the psychologist's determination that, as a result of meeting these criteria, the individual has emotional, mental, and personality conditions which can impair his judgment, stability, reliability, and trustworthiness. *Id.*

Guideline J relates to security risks arising from criminal conduct. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Guideline J at ¶ 30. Involvement in criminal conduct calls into question a person's ability or willingness to comply with laws, rules, or regulations. *Id.* In citing Guideline J, the LSO cited six incidents of criminal activity in which the individual was:

1. Arrested and charged with: Battery Upon a Peace Officer (4th degree felony); Assault Against a Household Member; Resisting, Evading, or Obstructing an Officer (two counts); and Operation of Vehicles on Approach of Authorized Emergency Vehicles in July 2017;
2. Issued a Restraining Order in July 2017;
3. Cited for Speeding 21-25 miles per hour over the speed limit in a school zone in March 2016;
4. Arrested and charged with Aggravated Battery Against a Household Member in June 2001;
5. Observed to be Resisting and Obstructing a police officer in April 1987; and
6. Cited for Reckless Driving in January 1987.

Ex. 1 at 1-2.

IV. Findings of Fact

I have carefully considered the totality of the record in reaching the findings of fact set forth below.

After being arrested in July 2017, following an incident with his ex-wife, the individual underwent a PSI in October 2017. During the PSI, the individual acknowledged the occurrence of each event of criminal conduct that was subsequently cited in the Notification Letter. Ex. 14 at 54-55, 68, 108-109, 112, 114-115, 118. The individual was then evaluated by a DOE consultant-psychologist (psychologist) in December 2017. Ex. 10.

The psychologist's evaluation noted that, following his 2001 arrest, the individual was court-ordered to attend a six-month anger management program. Ex 10 at 2. He then underwent professional counseling in 2015 due to marital problems with his wife. *Id.* The psychologist contacted the counselor who stated that she diagnosed the individual with Adjustment Disorder with Anxiety pursuant to the DSM-5. *Id.* The counselor explained that the individual had "irrational" thoughts about "suspicions that his wife was seeing someone else," and that the individual had a "history of jealousy." *Id.* at 3. The counselor stated that she advised that the individual read a book addressing verbal abuse and non-violent communication. *Id.* When the psychologist questioned the individual about his experience in counseling, the individual reported that he found it helpful and that he learned "how to avoid a fight [and] walk away." *Id.* at 3. He explained that the book about verbal abuse helped him "work on non-violent communication." *Id.*

The individual also reported to the psychologist that he and his wife engaged in counseling sessions with their pastor in 2016. *Id.* However, after an incident in which the individual pushed his wife and she fell, the wife ceased attending the counseling sessions.² *Id.*

The psychologist reported that at the time of her evaluation, the individual was subject to an Order of Protection. *Id.* at 7. The Order of Protection prohibits the individual from having communication with his now ex-wife and coming within 25 yards of her. Ex. 7. It also requires him to attend counseling. *Id.* The Order of Protection is effective though late September of 2018. *Id.* The psychologist noted that the individual reported that he is attending a court-ordered Domestic Violence Prevention Program. Ex. 10 at 4. The court ordered that the individual attend 52 weekly group therapy sessions. *Id.* When the psychologist contacted the program counselor, the counselor reported that the program is not therapy or treatment, but is instead intended to be education and counseling-based. *Id.* The counselor noted that the individual had not reported having “problems” in prior relationships. *Id.*

As a result of her interview with the individual and her discussions with his prior and current counselor, the psychologist determined that the individual met the DSM-5 criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood, which she noted was similar to his prior counselor’s diagnosis. *Id.* at 7. In support of this diagnosis, she cited the individual’s history of verbal and physical aggression in his romantic relationships, his self-description that he is “set in [his] ways” and “obsesses about arguments,” and his current counselor’s description that he has “some obsessive-compulsive tendencies...he can’t control other people and gets irritated.” *Id.* at 8. The psychologist noted that the individual “does not seem to realize the degree of his aggression,” and she explained that he is “inclined to explain his behaviors as justified responses to others’ treatment of him.” *Id.*

The psychologist also concluded that the individual’s feelings and behaviors were consistent with the DSM-5 features of Other Specified Obsessive Compulsive Disorder: Obsessional Jealousy, which she explained was characterized by a “preoccupation with a partner’s perceived infidelity.” *Id.* Additionally, due to the individual’s inability to modulate his emotions and control his behaviors when he is angry, anxious, or distressed, the psychologist found that he met the criteria for Unspecified Disruptive, Impulse-Control and Conduct Disorder. *Id.* She noted that the combination of the individual’s “emotional and behavioral tendencies to lose control, become aggressive, and blame others for conflicts constitutes emotional, mental, and personality conditions which can impair [the individual’s] judgment, stability, reliability, and trustworthiness.” *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors

² The individual claims that the wife tripped after he pushed her. Ex. 10 at 3.

prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual has not sufficiently mitigated the security concerns noted by the LSO with regard to Guidelines I or J. 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). Therefore, I have determined that the individual's security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

As an initial matter, I note that legitimate security concerns exist as a result of the DOE psychologist's evaluation and the individual's criminal history.

At the hearing, the individual presented the testimony of five witnesses: a friend, the husband of his first ex-wife,³ two of his clients, and his counselor. His friend and the husband of his first ex-wife both testified that they had never seen the individual act aggressively and felt that he was able to control his emotions. Tr. at 14-15, 23. They further stated that they feel he is honest, reliable and trustworthy. *Id.* at 15, 32-33. The husband of the first ex-wife elaborated, stating that the individual had attended a marriage class he taught and felt that the 2017 incident between the individual and his most recent ex-wife was out of character for him. *Id.* at 23. Both of the individual's work clients also indicated that the incident was not representative of the individual's typical behavior. *Id.* at 42, 58.

The individual's pastoral counselor testified that, beginning in 2016, the individual engaged in marital and individual counseling with him. *Id.* at 73. The pastoral counselor explained that he was aware of both the July 2017 incident with the ex-wife and of a prior incident in which the individual pushed her, causing her to fall and become injured. *Id.* at 71-72, 74, 80, 91. The pastoral counselor testified that, since the incident, he has held two counseling sessions with the individual and talked "on the phone or just casually a few times about it." *Id.* at 72. He testified that he has noticed "tremendous change" in the individual over time; however, he has not engaged in a counseling session with the individual for "a little over a month, maybe as much as two months." *Id.* at 73; 80.

The pastoral counselor stated that he was surprised to learn about the July 2017 incident, and he has not seen any type of psychological aberrations in the individual; however, he also testified that he was unaware of the individual's criminal history, nor was he aware of any physical altercations the individual had in prior romantic relationships. *Id.* at 81, 84, 95-96. Although the pastoral counselor stated that he did not know if the individual was currently engaged in a romantic relationship, he was aware that the individual continues to communicate with his ex-wife telephonically and via text message. *Id.* at 93-94. He further stated that he individual sees his ex-wife in church occasionally. *Id.* at 94.

The individual testified on his own behalf. Addressing his criminal history, the individual acknowledged that each of the six incidents listed on the LSO's summary of security concerns had occurred. *Id.* at 100-101, 102, 104, 105, 121. The individual explained that as a result of the 2017 incident with his ex-wife, the court placed him on a one-year probation and ordered that he attend 52 weeks of domestic violence classes. *Id.* at 114. He also acknowledged that the court issued his ex-wife a restraining order against him, which is in effect until September 2018. *Id.* The individual

³ The "first ex-wife" is different from the ex-wife involved in the 2017 incident.

stated that he has attended 22 of the 52 weekly domestic violence classes, and his domestic violence counselor submitted a document confirming his attendance and describing his positive progress and growth. *Id.* at 115, 117; Ex. B. The individual further testified that he is in compliance with all aspects of his probation, which his probation officer affirmed. Ex. A. However, the individual stated that he has been communicating with his ex-wife one to two times per week, in violation of the restraining order. *Id.* at 115, 117-118, 120.

Turning to his history of counseling and psychological treatment, the individual explained that in 2001, he was court-ordered to attend anger management, but it “was a joke.” *Id.* at 140. He stated that he did not “get anything out of it.” *Id.* The individual also testified that he began seeing a counselor individually in June 2015 for a little over one year. *Id.* at 131-132. He explained that the counselor was “trying to give [him] the tools to communicate with [his ex-wife], but sometimes it didn’t work too well.” *Id.* at 132. The individual eventually stopped attending counseling as it felt he was “just wasting time and money.” *Id.* He further explained that he saw his pastor for marital and individual counseling. *Id.* at 136. Lastly, the individual indicated that he is currently attending counseling ordered by the court as a result of the 2017 incident with his ex-wife. *Id.* at 138. When asked about specific tools he learned in this counseling, the individual stated that he has learned that he “can choose to walk away;” however, he explained that there has not been anything that he has “had to deal with” that would require him to exercise this new tool. *Id.* at 140.

In discussing the 2017 incident, the individual explained that, instead of engaging with his ex-wife in a manner which prompted her to call the police, he “would have just walked away.” *Id.* at 147. During the 2017 incident, a police officer became involved, and the individual was charged with Battery on a Peace Officer as a result of an altercation that occurred. Ex. 9. The individual explained that, although he apologized to the officer after being arrested, the police officer “was still rude and a jerk,” and the individual “did not appreciate the way [the officer] conducted himself.” *Id.* at 145. As such, the individual explained that is “one of the reasons [he does not] display remorse or show remorse.” *Id.* When asked if he would have handled the situation with the officer differently after he gained new tools through counseling, the individual stated, “I was willing to comply with the officer if he would have been more professional.” *Id.* at 148.

The DOE psychologist testified last, after hearing all of the preceding testimony. She stated that, with regard to her diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, the individual met five of the diagnostic criteria. *Id.* at 169-170. She indicated, however, that adjustment disorders are “time limited,” in that such disorders arise in response to an external situation and resolve once the situation is resolved. *Id.* at 169-170. With regard to her second diagnosis of Other Specified Obsessive-Compulsive Disorder: Obsessional Jealousy, the psychologist explained that with such a disorder, a person has a preoccupation with a partner’s perceived infidelity, which the individual acknowledged, stating that he would “obsess” about his ex-wife’s perceived infidelity. *Id.* at 171. The psychologist explained that her final diagnosis of Unspecified Disruptive, Impulse-Control and Conduct Disorder was due to the individual’s inability to control his conduct and his loss of impulse control. *Id.* at 172.

The psychologist testified that, after evaluating the individual, her opinion was that he had an illness or mental defect which caused or may cause a significant defect in his judgment or reliability due to his perception of “being wronged or disrespected or deceived, and that then being rationalized by him, made acceptable by him to engage in behaviors that other people were frightened by or

upset by or found intrusive.” *Id.* at 173. She further explained that the individual has difficulty “seeing from another’s perspective how he presents himself and how that might make them feel.” *Id.*

The psychologist additionally expressed concern that the individual had not disclosed the full extent of his history of jealousy or domestic violence to his mental health providers. *Id.* at 174-175. She indicated that when she contacted the individual’s first counselor, although the individual had recently contacted the counselor to explain that the DOE psychologist would be calling, he did not inform her of his current circumstances or the reason for the psychologist’s call. *Id.* at 174. Similarly, the individual’s current domestic violence counselor informed the psychologist that he knew of no other incidents of domestic violence in the individual’s history, aside from the 2017 incident with the ex-wife. *Id.* The psychologist additionally pointed out that the individual’s pastoral counselor was unaware of any previous criminal history or incidents of domestic violence. *Id.* at 175. She explained that this lack of disclosure was a significant concern because, in order for “therapy or counseling to be effective, the person has to be truthful, and without that, the counselor...can’t come to know the person well enough to provide the most effective treatment.” *Id.* at 185.

With regard to whether the individual’s testimony at the hearing would change any of her conclusions, the psychologist stated that she did not observe anything at the hearing that would convince her that the individual has a sufficient understanding such that he could reasonably change his behavior. *Id.* at 175, 179. Furthermore, she noted that the current domestic violence program that the individual is attending is not a treatment program, but solely a psychoeducational program. *Id.* She stated that such a program was “not a sufficient condition for people to make...reliable, lasting changes.” *Id.* at 176. As such, she opined that the individual has not been adequately treated, and that there exists a moderate risk of recurrence. *Id.* at 179.

A. Guideline J

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness as it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. Guideline J at ¶ 30. A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination casts doubt on the individual’s judgment, reliability, or trustworthiness can raise a security concern under Guideline J and be disqualifying. *Id.* at ¶ 31(a). A disqualifying condition under Guideline J need not require a formal charge, prosecution, or conviction as evidence of criminal conduct may raise a security concern. *Id.* at ¶ 31(b). Furthermore, currently being on probation, or violation of that probation, could raise a security concern and be disqualifying under Guideline J. *Id.* at ¶¶ 31(c)(d).

It may be possible to mitigate such concerns if an individual can show, in relevant part, that: (1) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; or (2) there is evidence of successful rehabilitation, including, but not limited to, the passage of time without recurrence of criminal activity or compliance with the terms of probation. *See id.* at ¶¶ 32(a)(d).

Here, the individual's history reflects a pattern of criminal activity spanning back over 30 years. It is apparent that the extent of the individual's criminal activity is unknown as the individual admitted to an undocumented incident in which he pushed his wife in frustration, and she was injured. Furthermore, the individual is currently on probation and admitted to repeatedly violating that probation by having regular contact with his ex-wife. Although the individual is participating in a domestic violence prevention program and shows consistent attendance and progress, the individual has received help for his behavior in the past (an anger management program in 2001, counseling in 2015 focused on martial problems and verbal abuse, and additional counseling in 2016 after he pushed his wife), and yet, the individual appears to have been unaffected by those efforts, continuing to engage in violence and abusive behavior.

As such, I cannot determine that the individual has either been successfully rehabilitated or that his criminal conduct occurred under such unusual circumstances that is unlikely to recur. Further, I cannot determine that the individual's pattern of behavior does not cast doubt on his reliability, trustworthiness, or good judgment. Accordingly, I find that the security concerns under Guideline J have not been resolved.

B. Guideline I

Certain personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27. An opinion by a duly qualified mental health profession that an individual has a condition that may impair judgment, stability, or trustworthiness can serve as a disqualifying condition for a security clearance. *Id.* at ¶ 28(b). A recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that the individual's previous condition is under control or in remission, and has a low probably of recurrence or exacerbation could potentially mitigate the security concern. *Id.* at ¶ 29(c).

Here, although the individual is enrolled in a domestic violence prevention program, he did not enroll in such a program voluntarily, but did so at the order of the court. *See id.* at ¶ 29(b). Furthermore, he is not attending regular and consistent voluntary counseling with his pastoral counselor. *See id.* at ¶ 29(a). The psychologist noted that in spite of his participation in counseling and education, the individual had not been providing a complete and honest history of his jealousy and domestic violence to his treatment providers, and as such, he is inhibited from receiving effective treatment. Tr. 175, 185. Further, she noted that the individual was not enrolled in an appropriate treatment program for his diagnoses. *Id.* at 174-176. The psychologist testified that the individual has not been adequately treated and is still at a moderate risk of his violent behavior recurring. *Id.* at 179; *see* Guideline I at ¶ 29(c). As such, I find that the security concerns under Guideline I have not been resolved.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with Guidelines I or J. Accordingly, I have determined 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.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals