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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: June 29, 2021) Case No.: PSH-21-0078
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Issued: September 24, 2021

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ 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. On February 21, 2018, the Individual signed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 11 at 43.² In his response to the QNSP, the Individual denied violating any information technology (IT) rules, procedures, guidelines, or regulations in the prior seven years. *Id.* at 41. On February 11, 2019, an Office of Personnel Management (OPM) investigator interviewed the Individual as part of OPM's investigation of his eligibility for access authorization. Ex. 13 at 60. During the interview, the Individual disclosed that he had violated IT security policies by connecting a personal Universal Serial Bus (USB) device to his work computer to print documents for one of his children's extracurricular activities. *Id.* at 60. He also disclosed that, about five years prior to the interview, he viewed pornography on his work computer. *Id.* at

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

² The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibit. For example, the first page of Exhibit 2 is marked as page 5. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

61. The Individual volunteered that he had been “lied to his whole life,” “is being watched, even at home,” and that these matters went “straight to the top.” *Id.* at 62.

On May 5, 2020, the Local Security Office (LSO) issued the Individual a letter of interrogatory (LOI). Ex. 6 at 2. In his response, the Individual admitted that he connected a personal USB to his work computer numerous times from 2016 to 2019 to further his volunteer work for his child’s extracurricular activity. Ex. 7 at 3. The Individual also disclosed that he believed that he had been monitored for his entire life and that he was “interesting to a lot of people.” *Id.* at 1–2. After submitting his response to the LOI, the Individual e-mailed the LSO to volunteer that he had potentially violated the DOE Contractor’s IT policies in February 2019 when he used a colleague’s personal USB drive to transfer work-related data. Ex. 8.

On August 20, 2020, the Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a clinical evaluation. Ex. 9 at 2. During the clinical interview, the Individual divulged that he believed that he was chosen for a special purpose revealed through astrology and the Bible, that his genes are “quite powerful,” and that his children are prodigies with special mental abilities. *Id.* at 4–6. The Individual reported believing that he had discovered coded clues revealing that the Freemasons were monitoring him and manipulating events in his life. *Id.* at 5–6. The Individual also believed that he had discovered a network of Freemasons, including coworkers, friends, and family members, who were behind this manipulation. *Id.* The Individual indicated that he was no longer angry about this situation, but had previously considered assaulting those who he suspected of being Freemasons and committing suicide. *Id.* at 6–7.

Following the clinical interview, the DOE Psychiatrist issued a Psychological Assessment (Report) in which he opined that the Individual met the diagnostic criteria for Delusional Disorder, Mixed Type with Grandiose and Persecutory Delusions, Continuous, and Attention Deficit Hyperactivity Disorder (ADHD), Combined Presentation, Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 10. The DOE Psychiatrist opined that Delusional Disorder could impair the Individual’s judgment, reliability, stability, or trustworthiness and that ADHD could “compound” the adverse effects of Delusional Disorder. *Id.* at 9. The DOE Psychiatrist indicated that the Individual’s prognosis was “poor,” but could be improved by establishing a therapeutic relationship with a psychologist and undergoing an evaluation by a psychiatrist for consideration for psychotropic medication. *Id.* at 9–10.

The LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline I (Psychological Conditions), and Guideline M (Use of Information Technology) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted thirteen exhibits (Ex. 1–13). The Individual submitted one exhibit

(Ex. A). The Individual testified on his own behalf and DOE presented the testimony of the DOE Psychiatrist. Hearing Transcript (Tr.) at 3.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 1. “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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The SSC cited the Individual’s admission to having used his USB drive and a colleague’s personal USB drive on his work computer, his misuse of his work computer to view pornographic material, and his failure to disclose his violations of IT policies on the QNSP. Ex. 1 at 1–2. The LSO’s allegations that the Individual deliberately omitted relevant information from the QNSP and misused government resources justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a), (d).

The LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the second basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 2. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychiatrist’s determination that the Individual met the diagnostic criteria for Delusional Disorder and ADHD under the *DSM-5*. Ex. 1. The opinion of the DOE Psychiatrist that the Individual has one or more conditions that may impair his judgment, stability, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

The LSO cited Guideline M (Use of Information Technology) of the Adjudicative Guidelines as its final basis for concluding that the Individual was ineligible for access authorization. Ex. 1 at 3. “Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual’s reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.” Adjudicative Guidelines at ¶ 39. The SSC cited the Individual’s admission to violating the DOE contractor’s IT policies by using his coworker’s USB device and his personal USB device on his work computer. Ex. 1 at 3. The LSO’s allegation that the Individual introduced hardware, firmware, software, or media to an IT system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized justifies the LSO’s invocation of Guideline M. Adjudicative Guidelines at ¶ 40(f).

III. REGULATORY STANDARDS

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 Dep't 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.

IV. HEARING TESTIMONY

The Individual testified that he unintentionally omitted his violation of the DOE contractor’s IT policies from the QNSP due to carelessness. Tr. at 25. He admitted that he violated his employer’s IT policies when he inserted his personal USB device and his colleague’s personal USB device into his work computer. *Id.* at 18–24. The Individual indicated that he used the colleague’s personal USB device because he needed to provide data he had collected to the colleague, an approved device he had been issued was malfunctioning, and the colleague told him that he often used the USB device at work. *Id.* The Individual testified that he had not considered that using personal USB devices on his work computer violated the DOE contractor’s IT policies until the interview with the OPM investigator, and said that he disclosed his conduct to the DOE contractor several days after the OPM interview. *Id.* at 19–20, 24. The Individual attributed his accessing pornographic material on his work computer to the incompatibility of his sedentary job with his “genetics.” *Id.* at 26–27. The Individual represented that he had been “almost on autopilot” for years and was seeking an outlet for his boredom. *Id.*

With respect to his beliefs concerning the Freemasons, the Individual said that he had noticed colleagues behaving oddly and been told strange things by his family which led him to research his circumstances. *Id.* at 29–33. The Individual represented that he began researching Freemasonry on the recommendation of a colleague and reached the conclusion that he was a Christ figure. *Id.* at 32, 42–44, 47. The Individual said that his wife “laughs at [him]” and that he had no one to talk to concerning his beliefs because “everyone lies to [him].” *Id.* at 31, 33. The Individual represented that research into numerology and astrology allowed him to interpret hidden messages and predict future events. *Id.* at 33–36; *see also* Ex. A (reflecting the Individual’s thoughts and predictions since September 2020).

The DOE Psychiatrist testified that the Individual’s Exhibit A confirmed that the Individual experienced symptoms of Delusional Disorder in the year following the clinical interview. *Id.* at 46. The DOE Psychiatrist indicated that his diagnosis of the Individual was unchanged, and that the Individual’s prognosis was poor to very poor. *Id.* at 46–47.

V. FINDINGS OF FACT

The Individual viewed pornographic content on his work computer on numerous occasions in 2014. Ex. 13 at 61; Tr. at 26–27. From 2016 to 2019, the Individual routinely connected a personal USB device to his work computer to prepare and print documents for one of his children’s extracurricular activities. Ex. 13 at 60; Tr. at 18–20. In 2019, the Individual connected a colleague’s personal USB device to his work computer to transmit data to the colleague when a USB device approved by the DOE contractor malfunctioned. Tr. at 22–24; Ex. 8. Each of these actions by the Individual violated the DOE contractor’s IT policies. Tr. at 17–19, 22.

The Individual checked a box marked “no” in response to a question on the QNSP asking whether, in the prior seven years, he had “introduced, removed, or used hardware, software, or media in connection with any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines, or regulations or attempted any of the above.” Ex. 11 at 41. The Individual disclosed to an OPM investigator that he viewed pornographic material on his work computer and violated the DOE contractor’s IT policies by connecting a personal USB device to his work computer. Ex. 13 at 60–61. Two days after the investigatory interview, the Individual disclosed his use of a personal USB device on his work computer to the appropriate personnel at the DOE contractor. *Id.* at 67. The DOE contractor deemed the Individual’s violation of its IT policies a “non-incident” and did not take any action based on his disclosure. *Id.*

The Individual told the OPM investigator and LSO that he was being monitored at all times. Ex. 7 at 1–2; Ex. 13 at 62. During the clinical interview with the DOE Psychiatrist, the Individual revealed his belief that he had uncovered that Freemasons were responsible for important historic events and that a network of Freemasons, including his friends, family, and coworkers, were manipulating events in his life and testing him. Ex. 9 at 6–8. He also asserted that he is endowed with powerful genes that have enhanced his mental and physical abilities, compared his historical significance to that of Jesus and Moses, and indicated that he has been chosen to bring in the age of Aquarius. *Id.* at 5–7. The Individual believes that he is a messiah and is seeking to understand how to fulfill his world-changing purpose. Tr. at 36–38; *see also* Ex. A (reflecting hundreds of pages of the Individual’s observations and thoughts from September 2020 to August 2021).

The DOE Psychiatrist diagnosed the Individual with Delusional Disorder and ADHD. Ex. 9 at 10. The DOE Psychiatrist opined that Delusional Disorder could impair the Individual’s judgment, reliability, stability, or trustworthiness and that ADHD could “compound” the adverse effects of Delusional Disorder. *Id.* at 9. The Individual does not agree that he has experienced delusions and has not pursued treatment with a mental health professional. Tr. at 37–38, 43–44. The DOE Psychiatrist opined at the hearing that the Individual is experiencing ongoing symptoms of Delusional Disorder and that his prognosis is poor to very poor. *Id.* at 46–47.

VI. ANALYSIS

A. Guideline E

As discussed above, the LSO’s allegations that the Individual omitted his violations of the DOE contractor’s IT policies from the QNSP and misused government resources by viewing

pornography on his work computer justify the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a), (d). The Individual asserted that he disclosed his misuse of unapproved USB devices and viewing of pornography on his work computer and fully acknowledged his misconduct. The Adjudicative Guidelines provide seven conditions which may mitigate security concerns under Guideline E:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17(a)–(g).

The Individual disclosed his omissions from the QNSP to the OPM investigator without being confronted by the facts. There is no indication in the record that the OPM investigator was aware of the Individual's violations of the DOE contractor's IT policies or that the Individual's behavior ever would have been discovered but for his volunteering the information. Additionally, the Individual made appropriate disclosures of his use of unapproved USB devices to the DOE contractor within days of his interview with the OPM investigator. For these reasons, I find that the first mitigating condition under Guideline E is applicable to the Individual's omission of his use of unapproved USB devices from the QNSP. *Id.* at ¶ 17(a).

Two-and-one-half years have passed since the Individual disclosed to the DOE contractor that he used an unapproved USB device on his work computer. Additionally, approximately seven years have elapsed since the Individual reported having last viewed pornography on his work computer. In light of the passage of a significant period of time without recurrence of the misconduct, I find that the third mitigating condition is applicable in this case. *Id.* at ¶ 17(c).

The Individual demonstrated honesty and a willingness to place national security over his self interest by volunteering his derogatory conduct to the OPM investigator. In light of the Individual's

forthcomingness, and the passage of time since he committed the derogatory conduct, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline I

The DOE Psychiatrist's opinion that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness raises security concerns under Guideline I. *Id.* at ¶ 28(b). The Individual argued that he had uncovered hidden truths, however improbable they might sound, and that he was not delusional. An individual can mitigate security concerns under Guideline I if:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) 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 or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; or,
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29(a)–(e).

The first two mitigating conditions are inapplicable because the Individual has not pursued treatment with a mental health professional. *Id.* at ¶ 29(a)–(b). The third and fourth mitigating conditions are inapplicable because the DOE Psychiatrist opined at the hearing that the Individual demonstrated ongoing symptoms of Delusional Disorder and that his prognosis without treatment was poor to very poor. *Id.* at ¶ 29(c)–(d).

The fifth mitigating condition under Guideline I is inapplicable because the Individual's testimony during the hearing provided evidence of an ongoing problem. I find the Individual's beliefs that he is a Christ figure, that his friends, family, and coworkers are conspiring to deceive him, and that a cabal of Freemasons is manipulating events impossible to believe and indicative of impaired reasoning on the part of the Individual. *Id.* at ¶ 29(e).

The DOE Psychiatrist's diagnosis of the Individual with Delusional Disorder and opinion that this condition impairs his judgment, reliability, and trustworthiness raised significant security concerns under Guideline I of the Adjudicative Guidelines. The DOE Psychiatrist reaffirmed his opinion at the hearing and the Individual's testimony showed that he continues to hold paranoid and unreasonable beliefs. Therefore, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

C. Guideline M

The LSO's allegations that the Individual used unapproved USB devices on his work computer in violation of the DOE contractor's IT policies raise security concerns under Guideline M. *Id.* at ¶ 40(f). The Individual acknowledged that he had violated the DOE contractor's IT policies but represented that he had disclosed his actions and that the DOE contractor had deemed the violations incidental non-compliance. An individual may mitigate security concerns under Guideline M of the Adjudicative Guidelines if:

- (a) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the misuse was minor and done solely in the interest of organizational efficiency and effectiveness;
- (c) the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification to appropriate personnel; and
- (d) the misuse was due to improper or inadequate training or unclear instructions.

Id. at ¶ 41(a)–(d).

Several years have passed since the Individual's last use of an unauthorized USB device on his work computer, the Individual disclosed the behavior to the appropriate entity within the DOE contractor, the DOE contractor deemed the Individual's behavior a "non-incident," and, in the case of the USB device provided by his colleague, the Individual's behavior was unintentional and in the interest of completing a work project. For these reasons, I find the first three mitigating conditions under Guideline M applicable. *Id.* at ¶ 41(a)–(c). Thus, I conclude that the Individual has resolved the security concerns asserted by the LSO under Guideline M.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E, I, and M of the Adjudicative Guidelines. 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 find that the Individual has resolved the security concerns asserted under Guidelines E and M, but has not brought forth sufficient evidence to resolve the security concerns under Guideline I. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals