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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: August 23, 2021) Case No.: PSH-21-0099
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Issued: November 18, 2021

Administrative Judge Decision

Richard A. Cronin, Jr., 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 be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. The Individual's employer requested that the Individual be certified for the DOE's Human Reliability Program (HRP). Exhibit (Ex.) 7 at 2.

As a result of an HRP-requested examination by a psychologist (the HRP Psychologist), the Individual underwent an Office of Personnel Management (OPM) Enhanced Subject Interview (ESI) on December 4, 2018. Ex. 9. The Individual was subsequently examined by a DOE-contractor psychologist (DOE Psychologist). Ex. 7. The DOE Psychologist concluded that the Individual has several traits associated with narcissistic personality disorder that can "impair his judgement, stability, reliability, and trustworthiness." Ex. 7 at 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The Notification Letter informed the Individual

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.

that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual presented the testimony of six witnesses along with his own and submitted one exhibit. *See* Transcript of Hearing, Case No. PSH-21-0099 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted nine exhibits, marked as Exs. 1 through 9.

II. Notification Letter and the Associated Security Concerns

Guideline I (Psychological Conditions) provides that "[c]ertain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. Under Guideline I, the LSO alleged that after conducting a psychological evaluation of the Individual on March 3, 2021, the DOE Psychologist concluded that the Individual "possesses several traits associated with narcissistic personality disorder[,] which can "impair judgement, stability, and trustworthiness." Ex. 1 at 1. Given the DOE Psychologist's evaluation, the LSO was justified in invoking Guideline I.

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 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) (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 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. Findings of Fact

As referenced above, the Individual held a security clearance and was examined by the HRP Psychologist as part of the process for his inclusion in the HRP program. Ex. 5 at 1. The HRP Psychologist “made observations during her evaluation of [the Individual] that called into question the clarity of his thought.”² Ex. 5 at 1; Ex. 7 at 5. Specifically, the HRP Psychologist noted that, at times, it was impossible to comprehend the Individual’s speech because he was stringing words together that did not make sense. Ex. 7 at 5. In her report, the HRP Psychologist found that the Individual appeared to be emotionally and cognitively immature. Ex. 4 at 1; Ex. 7 at 6; The HRP Psychologist concluded that her findings raised concerns pertaining to the Individual’s “continued eligibility to hold [a] security clearance.” Ex. 7 at 2. Consequently, the Individual was not recommended for an HRP certification at that time. Ex. 7 at 2.

The Individual then underwent an ESI. During the interview, the Individual elaborated on his termination on March 9, 2018, from a supervisory position at a food market. Ex. 9 at 67. The Individual informed the OPM investigator that he had been suspended days prior to his termination after leaving his workplace approximately thirty-seven minutes prior to the end of his shift. Ex. 9 at 67. Prior to his termination, the Individual had approached management to discuss the harassment he was facing at the hands of his supervisor. Ex. 9 at 67. The Individual stated in a prior November 9, 2018, Questionnaire for National Security Positions (QNSP) that the reasons management provided for his termination were “untrue” and were presented to justify his termination. Ex. 9 at 27. The investigation conducted by the OPM investigator revealed that, according to the employer, the Individual had been counseled by his supervisor a total of four times in 2018 for various incidents. Ex. 9 at 117.

The Individual subsequently was examined by the DOE Psychologist, who compiled her findings in a report dated March 16, 2021. Ex. 7. In forming her opinion, the DOE Psychologist referenced the *Diagnostic and Statistical Manual, 5th Edition* (DSM-5), reviewed the HRP Psychologist’s report, and conducted a personality inventory, in addition to an hour-long interview. Ex. 7 at 3. The DOE Psychologist noted that between the years 2012 and 2016, the Individual held several positions, with periods of unemployment in 2013 and 2015. Ex. 7 at 3-4. Regarding his 2018 termination, the Individual informed the DOE Psychologist that he had been terminated for confronting his supervisor’s harassment and the different standards to which he had been held when compared to his coworkers, and further, he denied ever being reprimanded. Ex. 7 at 4. The report stated that the Individual had been terminated from his employment in 2018 after receiving counseling regarding two prior violations. Ex. 7 at 4. During subsequent employment, although he had not been terminated, the Individual reported that his colleagues were reluctant to adopt his approach to “problem solving.” Ex. 7 at 4. The report indicated that the Individual “did not take any responsibility for his infractions.” Ex. 7 at 6. Nonetheless, since entering employment with his current employer, the Individual has not received any reprimands or warnings, and “was put in a temporary position of supervising/managing due to the temporary absence of the supervisor.” Ex. 7 at 4.

In making her determination that the Individual suffered from a condition that could impair judgement, stability, and trustworthiness, the DOE Psychologist found:

² The record does not contain a copy of the HRP Psychologist’s report but the report is referenced in the DOE Psychologist in her report.

[The Individual's] lack of awareness of how he may be negatively perceived by others and the possibility that he misunderstands others is a sign of emotional immaturity. His self-importance, lack of accountability and his tendency toward superficial explanations of his experiences are also traits consistent with emotional immaturity. These are also traits associated with narcissistic personality disorder. However, [the Individual] does not currently meet the criteria for a formal diagnosis of this disorder. These traits have made for difficult relationship dynamics in work and social settings and have likely been a leading cause of his terminations from previous jobs and his frequent job changes.

Ex. 7 at 5. The DOE Psychologist also opined that “[t]he prognosis for personality disorder traits is poor, especially considering his unrealistic view of himself, defensive nature, and poor insight.” Ex. 7 at 6.

V. Hearing Testimony

The Individual's father, who was made aware of the issues in the Summary of Security Concerns, acknowledged his son's prior termination from a food market. Tr. at 14-15. After learning of his son's termination, and although his son did not ask, the Individual's father reached out to his son's former employer. Tr. at 16. He deduced that the termination was the result of “a personality conflict[,]” as the manager did not agree with the Individual's attempts to seek answers regarding the disparate treatment he was facing at his workplace. Tr. at 15-16. During his conversation with the Individual's former employer, it was revealed that the Individual, a young man at the time, innocently used equipment in a manner that his manager considered improper use. Tr. at 21.³ The Individual's father denied having any knowledge of other terminations or disagreements with colleagues and stated that each time the Individual sought new employment, “it has always been to make more money.” Tr. at 17-19.

Regarding an event cited in the DOE Psychologist's report, the Individual's father testified that his son's decision to discontinue his college education is something over which they “battle[d]” and in their discussions, he determined the Individual did not “want to go to college just because it was expected [of] him[.]” Tr. at 17-18. He described his son as a “very mature young man[,]” “mature in his beliefs towards God” and his interactions with other people. Tr. at 21-22. The Individual's father also stated that the Individual acknowledges and “owns up to” any mistakes he has made. Tr. at 23. While the Individual's father disagreed with the findings the DOE Psychologist made in the report, he stated that he could understand how the DOE Psychologist could have come to certain conclusions and attributed it to the DOE Psychologist not knowing the Individual. Tr. at 34-35.

³ The Individual's father testified that this incident had taken place approximately one year prior to the Individual's termination, and it was being used by the manager as a justification for the termination. Tr. at 29-30. During his testimony, the Individual explained that the manager did not inform him of the impropriety of his actions at the time, and had he known, he would not have engaged in the behavior. Tr. at 141-142. The Individual testified that, once the matter was explained to him, he apologized and asked his supervisor how he could correct the situation. Tr. at 142.

The Individual's wife testified that, regarding the Individual's 2018 termination, the Individual's manager had been "treating [the Individual] unfairly[.]" confirming that the Individual "stood up" to his supervisor Tr. at 45. She also denied any knowledge of issues with other employers, indicating that the Individual informed her that he was leaving employment for "better pay." Tr. at 47, 55-56. She also confirmed that she has never had an occasion to question the Individual's reliability and trustworthiness, and believes he is the sort of person who will admit to and remedy any mistakes. Tr. at 48-50. The witness also indicated that the Individual has matured since the beginning of their relationship, prioritizing her and her needs. Tr. at 51-52.

Other witnesses testified that they believed the Individual to be reliable, trustworthy, honest, mature, and possessing good judgement. Tr. at 65-66, 78-79, 89-92, 102-104. Another witness testified that the Individual had a "pretty healthy confidence" and "a good awareness of his abilities." Tr. at 67. She also did not find the Individual to be overly defensive. Tr. at 68. The Individual's current colleagues denied any concerns in terms of the Individual's interactions with his fellow coworkers. Tr. at 77, 80, 99-100. One colleague stated that his supervisor was impressed with the Individual's work performance, and that he did not agree with the DOE Psychologist's assessment regarding the Individual's attitude. Tr. at 100, 102. A former colleague with whom the Individual remains in contact described the Individual as "very competent[.]" making note of the fact the Individual would play the role of a mediator, and further, stated that he was not aware of any personal conflicts the Individual may have had with others, describing the Individual as "well put together psychologically."⁴ Tr. at 87-89.

Regarding his termination in 2018, the Individual testified that his manager had approached him earlier the day of his termination to discuss concerns, which the Individual thought were "completely untrue." Tr. at 108. According to the Individual, the manager later apologized to the Individual for the way he had been treated. Tr. at 108. The Individual was terminated that evening, without being provided a reason, after having completed his shift. Tr. at 108, 119-20. The justifications for his termination were provided later via a telephone call. Tr. at 119-20. When asked about the OPM report's statement that the individual had been counseled on the four separate occasions prior to his termination, the Individual voiced his belief that his former employer had reported factual inaccuracies to the OPM investigator due to the optics of his termination. Tr. at 113-16, 118.⁵

⁴ The record contains seven statements in support of his character. Ex. A. These statements described the Individual as respectful, kind, dependable, reliable, honest, and self-aware, and one specifically indicates he has a "great personality while working with others." Ex. A at 3-10.

⁵ The Individual testified that his employer had never counseled him regarding the four incidents other than the alleged misuse of company property, and instead, provided these incidents as justifications for his termination. Tr. at 118-19. One of the alleged incidents on which the Individual was counseled was a break policy violation. Tr. at 113. The Individual testified that he was an assistant supervisor at the time, and it was not his employer's policy or protocol to receive approval from a co-worker in another department prior to departure. Tr. at 119-20, 142-44. The DOE Psychologist cited this incident as an example of the Individual's unreasonable expectation of unfavorable treatment, in that the Individual excused his behavior or alleged that the fault was with his employer. The DOE Psychologist found that for the Individual, if there is no specified protocol pertaining to his circumstances, "he gets to do it." Tr. at 178-79.

While employed in another position, the Individual devised a new protocol in his capacity as supervisor. Tr. at 121. Although this new protocol caused some uproar among certain customers, the Individual refused to change this new protocol. Tr. at 121-22. While some of his coworkers voiced their support of the Individual and the Individual never felt he was in jeopardy of losing his position, the Individual was “moved to a different location at that job[,]” and ultimately left that position Tr. at 120-23.⁶ With regard to the circumstances that prompted him to leave this position, the Individual explained that he had corrected a customer when she used a racial slur to describe one of his coworkers. Tr. at 123-24. The customer alleged that she attempted to apologize to the Individual, but the Individual informed his management that was not the case and urged them to review the security camera footage. Tr. at 124-25.

Although the Individual did not voice any objection pertaining to the information upon which the DOE Psychologist relied, he did feel that some matters in the report were not “properly put into context[.]” Tr. at 126-27. As a result, he feels some “particular questions...allowed this stuff to be mischaracterized.” Tr. at 127. The Individual, for example, insisted that he had only been terminated from one position and never left other employment in anticipation of termination. Tr. at 132-33. The Individual never considered seeking therapy or counseling to address the issues outlined in the report, as he was under the impression there was no specific recommendation to do so after speaking to appropriate security personnel. Tr. at 139-40.

The DOE Psychologist began her testimony by confirming that “being nice and a good guy” does not negate the possibility that the individual has an “underlying mental condition or trait[.]” Tr. at 162. Although she did not specifically identify the DSM-5 criteria associated with Narcissistic Personality Disorder that she felt the Individual possessed, she did testify that these include a grandiose sense of self-importance, a preoccupation with “fantasies of unlimited success, power, brilliance, beauty, or ideal love[,]” a belief that he is “special or unique,” a requirement for excessive admiration, and a sense of entitlement. Tr. at 163-65. A formal diagnosis of this disorder would require that the Individual meet five of the criteria listed in the DSM-5. Tr. at 166. However, the DOE Psychologist also asserted that a formal diagnosis would require “a more in-depth evaluation...that [would not] have been appropriate for this context.” Tr. at 165.⁷

As an example of the Individual’s grandiose sense of self-importance, the DOE Psychologist noted that although the Individual failed to complete his college education, he did not consider it a shortcoming, and further, although he spoke of learning how to discipline himself, he did not possess enough discipline to remain in college. Tr. at 166-67. Accordingly, the Individual was couching his “shortcomings” as strengths. Tr. at 167. Additionally, he provided more information than that for which she asked when he explained to her that others had noticed and mentioned “what a great job he did[.]” at work or that he was “exceptional at soccer,” providing an example of grandiose behavior. Tr. at 167-68, 202-03. The DOE Psychologist also noted the Individual’s use of “vague glowing terms” to describe his relationships, childhood, and business. 169-70, 201-

⁶ The DOE Psychologist testified that she specifically remembered the Individual indicating that although he moved on from that position to seek better opportunities, he also anticipated termination, and accordingly, she stated as much in her report. Tr. at 175-76.

⁷ The DOE Psychologist’s testimony noted the difficulty in diagnosing individuals with Narcissistic Personality Disorder, as well as the fact that there are “no standards protocol in terms of treating” the disorder. Tr. at 186-88.

02.⁸ She stated that miscommunications between the Individual and others “related to people having negative feedback for him, or setting some kind of boundary with him[,]” evidencing his need for excessive admiration. Tr. at 173.⁹

Although the DOE Psychologist felt the Individual was being truthful, she also determined that the Individual was “attempting to portray himself in the most positive light.” Tr. at 176-78, 181-82, 204. The testing conducted suggested elevated results in the self-importance scale, and the DOE Psychologist went on to state that the Individual’s failure to finish college, his parents’ divorce, and changing employment to obtain better opportunities without “a career aspiration” are all things that would likely stir self-consciousness, as opposed to the “superficial” confidence the Individual displayed regarding these matters. Tr. at 182-85, 198-200.

VI. Analysis

In the present case, the Individual has not sought to establish that he has been reformed or rehabilitated from the determination that he exhibits traits associated with narcissistic personality disorder. Instead, the Individual has sought to establish that he does not possess such traits. After examining all the evidence before me, I find that there is sufficient evidence for me to find that the Individual has mitigated the security concerns raised by the DOE Psychologist’s report.

While I note the Individual’s seeming reluctance to take full and complete responsibility for his 2018 termination or the alleged counseling he received, I do not believe that these incidents, taken by themselves, indicate an enduring pattern of problematic personality traits that will appear in the future. None of the testimony from the Individual’s witnesses indicated behavior or attitudes cited by the DOE Psychologist in her report. Witnesses provided convincing testimony that they were unaware of any conflicts between the Individual and his coworkers. One former coworker testified to the Individual acting as a “mediator” in the context of his prior employment. I also note that DOE Psychologist stated that individuals afflicted with Narcissistic Personality Disorder will typically present with challenges and difficulties in their workplace and personal relationships. This behavior is absent over the two years the Individual has been in his present employment.

I also have concerns regarding the DOE Psychologist’s reliance on the Individual’s apparent reluctance to respond to her questions other than using “vague and abstract answers.” I find the alleged paucity of information to be insufficient to indicate a positive indication of the existence

⁸ As an example, the DOE Psychologist noted the fact that the Individual did not express feelings of stress or difficulties adjusting to his parents’ divorce. Tr. at 169-70. She felt that the Individual was either unable or unwilling to give her “the full picture,” regardless of her follow-up questions. Tr. at 170-71.

⁹ Earlier in the hearing, DOE Psychologist asked the Individual about his strengths, and among other characteristics, the Individual noted his ability to communicate. Tr. at 149. The DOE Psychologist pushed back on the Individual’s perception of himself, stating that the clinician who performed the Individual’s psychological evaluation in connection with the HRP certification process indicated that she had difficulty understanding the Individual. Tr. at 151. She also suggested that the difficulties the Individual experienced during past employment could be related to or the result of miscommunication. Tr. at 151. In response, the Individual indicated that he, like others, is not perfect, and further, that the DOE Psychologist noted the fact that she did not experience the same communication difficulties the HRP Psychologist did. Tr. at 151-52.

of personality traits associated with a personality disorder. This finding is supported by the DOE Psychologist's testimony regarding the general difficulty in diagnosing an individual with Narcissistic Personality Disorder and the fact that the Individual was not being diagnosed with a specific mental illness using the guidelines listed in the DSM-5.¹⁰ Given these issues, I must give the DOE Psychologist's opinion limited weight and deference. With the evidence before me and for the reasons discussed above, I do not find the Individual's problematic personality traits, if they exist, to raise a security concern. Accordingly, I find that the Individual has mitigated the Guideline I concerns listed in the Summary of Security Concerns. See 10 C.F.R. § 710(c) (Application of the National Security Adjudicative Guidelines); Adjudicative Guidelines ¶ 29(e) (there is no indication of a current problem.)

VII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline I of the Adjudicative Guidelines. After considering all the evidence, both 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

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

¹⁰ I also take note of the possible reliance by the DOE Psychologist on an apparently flawed HRP Psychologist's report which speculated that the Individual may suffer from a cognitive disorder. While the DOE Psychologist did indicate that she felt that the HRP Psychologist who evaluated the Individual felt something was amiss with the Individual, the DOE Psychologist "[could not] take away a lot from [the] report." Tr. at 189. In this regard, the DOE Psychologist did not see any evidence of thought disorder in the Individual. Tr. at 193-94. However, in explaining the weight she afforded to the HRP Psychologist's report, she stated "I don't give it nil weight. I feel like her questions, or the incompleteness, sort of, of her understanding held a lot of weight." Tr. at 195.