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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: December 29, 2021)	Case No.: PSH-22-0038
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Issued: May 6, 2022

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “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 which requires that he hold a security clearance. In March 2019, disciplinary actions were taken against the Individual for two separate incidents. Ex. 4 at 1; Ex. 5 at 1, 4. These incidents gave rise to concerns that the Individual had difficulty complying with rules and responding to authority. Ex. 5 at 1. Following the disciplinary actions, the Individual was removed from the Human Reliability Program (HRP) but maintained his security clearance. Ex. 5 at 4. In 2020, the Individual underwent a reinvestigation for his security clearance by the Local Security Office (LSO). The reinvestigation raised doubts as to the Individual’s continued eligibility for a security clearance. Specifically, the reinvestigation revealed that the Individual’s supervisors had doubts regarding the Individual’s ability to cope with stress and his attitude toward authority. The reinvestigation also found that a DOE site’s clinical

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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.

psychologist opined that the Individual suffered from “a psychological condition that could call into question his eligibility for continued clearance.” Ex. 5 at 5.

Subsequently, the Individual was asked by the LSO to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist). Ex. 3 at 1; Ex. 5 at 5. The Individual complied with the LSO’s request, and a psychological evaluation was conducted on August 25, 2021. Ex. 3 at 1. The DOE Psychologist opined in a September 8, 2021, report that the Individual suffers from “several traits associated with narcissistic and avoidant personality disorders that can impair his judgement, stability, reliability, and trustworthiness.” Ex. 5 at 7. She recommended psychotherapy and indicated that the Individual’s prognosis was poor. Ex. 5 at 7.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of a therapist (Therapist). *See* Transcript of Hearing, Case No. PSH-22-0038 (cited as “Tr.”). The Individual also submitted 11 exhibits (“Ex.”), marked as Ex. A through K. The DOE Counsel presented the testimony of the DOE Psychologist and submitted seven exhibits marked as Ex. 1 through 7.

II. Notification Letter and Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline I of the Adjudicative Guidelines. Ex. 1. 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, the DOE Psychologist issued her September 2021 report indicating that the Individual suffers from traits associated with narcissistic personality disorder and avoidant personality disorder, which can impair his reliability, trustworthiness, and stability. Ex. 1 at 1. Further, the DOE Psychologist determined that the Individual’s prognosis for rehabilitation from these traits was poor. Ex. 1 at 1. This information justifies the LSO’s invocation of Guideline I in the present case.

III. Regulatory Standards

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all the relevant evidence, favorable or 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 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 and Hearing Testimony

At the hearing, the Therapist testified that in May 2019, she conducted several therapy sessions with the Individual. Tr. at 13-14, 17. At the end of his first session, the Individual disclosed to her that he had been assaulted when he was a young adult serving in the military. Tr. at 15, 65. During those sessions, the Individual and his Therapist worked on reducing the Individual's anxiety surrounding the assault and they discussed other potentially helpful services. Tr. at 17. They also discussed the Individual's work stressors at the time, which included the fact that the Individual's then-supervisor reminded him of his assailant, which the Individual found triggering. Tr. at 17, 28. The Therapist indicated that his reaction was "typical for survivors of trauma." Tr. at 18. Based on his symptoms and the Individual's disclosure of the assault, the Individual was diagnosed by the Therapist in May 2019 as suffering from posttraumatic stress disorder (PTSD).² Tr. at 19. To alleviate his symptoms, the Therapist recommended additional therapy along with continuing with his current anti-depression medication. Tr. at 19, 50, 83-84.

Nonetheless, the Individual believed that he did not require further therapy after his initial four sessions with his Therapist in May 2019, and thus he discontinued therapy. Tr. at 17, 69-70. In

² In making this diagnosis, the Therapist found that the Individual exhibited mood disruption, stress, anxiety, depression, anger outbursts, and sleep disturbance. Tr. at 35, 38-43. The PTSD diagnosis was made pursuant to the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition*. Tr. at 35.

December 2021, the Individual resumed therapy with the Therapist when his stressors increased.³ At this time, the Individual informed her of the psychological evaluation he underwent at the behest of the DOE. Tr. at 21-22, 68-70.

The Therapist testified that, prior to reading the DOE Psychologist's report, she had not been aware of some of the specific events that had taken place during the Individual's employment. Tr. at 22. The Therapist further testified that she agreed with the DOE Psychologist's report in that the Individual has "some traits of avoidance personality disorder[.]" but she denied finding any traits related to narcissistic personality disorder. Tr. at 23, 44-46. She also stated her belief that the Individual continues to suffer from PTSD. Tr. at 23-24. In terms of the Individual's avoidant personality traits, he tends to "avoid conflict...to the point where he can...blow up or be a little bit passive-aggressive with people." Tr. at 25-26. The Therapist observed that the Individual is still easily triggered by certain circumstances and people, and stated her desire to see the Individual exhibit less reactionary behavior.⁴ Tr. at 26-27. She also indicated that the Individual's PTSD and avoidant personality traits have impacted his ability to deal with stress. Tr. at 29-30. The Individual's Therapist testified that the Individual tried "to avoid [his] supervisor so that he would not get triggered," and that she believed that his problematic behavior "could be seen as [the Individual] being defiant[.]" Tr. at 20. Although the Individual was reluctant to share information regarding his assault during his therapy sessions in 2019, his Therapist believes he is an honest reporter of facts. Tr. at 20, 33-34.

The Therapist testified that she has observed improvement in the Individual's ability to deal with stressors, and further, that the Individual reported to her that his current job is less stressful for him. Tr. at 36-37, 43. The Therapist believes that therapy has improved the Individual's behavior at home and work. Tr. at 30, 32, 34, 73-74, 79. The Therapist also believes that the Individual understands that the events of his past do not have to continue impacting his behavior, and that he reported feeling less defensive and on edge. Tr. at 77-78. The Therapist indicated that she plans to see the Individual for several months to relieve some of the Individual's PTSD symptomology and that after this period, the Individual will be closer to resolving his PTSD. Tr. at 25, 33-34, 49-50.

The Individual testified that when he reported for the psychological evaluation by the DOE Psychologist, he had been informed that the report "was not confidential," and at the time, he was still experiencing feelings of embarrassment related to his assault. Tr. at 55; Ex. 5 at 5. The

³ At the time of the hearing, the Individual testified that he was seeing his Therapist on a weekly basis, with each session lasting approximately 45 to 55 minutes. Tr. at 24-25, 31, 70; Ex. H. During their sessions, they discuss relaxation skills, coping skills, and ways to understand triggers, and the Therapist educates the Individual about trauma. Tr. at 31, 71-72. The Individual testified that he finds therapy helpful, intends to continue attending therapy, and has experienced reduced anxiety and depression with his current anti-depression medication. Tr. at 31, 85, 108.

⁴ The Therapist observed that the Individual's reactionary behavior is geared more toward individuals in an interpersonal context rather than an entire system or environment. Tr. at 27. Accordingly, his ability to exercise good judgement is situational, and his judgement may be affected if he is triggered. Tr. at 27, 38. The Individual may not experience the same issues with a new supervisor, and further, the Individual's issues with his prior supervisor could be related to the Individual's PTSD. Tr. at 27-28.

Individual testified that, as a result, he did not disclose information regarding the assault to the DOE Psychologist as he should have. Tr. at 55-56. The Individual also testified that his PTSD had affected his interactions at work and home. Tr. at 67-68. He admitted that he may have exhibited an “attitude problem” toward his then supervisor and that some of his actions were wrong in hindsight. Tr. at 62-63. The Individual asserted that at the time of his actions, he did not understand that his behavior was the result of a trigger. Tr. at 63-64. He later connected his behavior at work to his triggers, which consisted of certain behaviors exhibited by others. Tr. at 57-60, 64-65. Although he was moved to another position at work, he does not feel that a return to his former position would cause him increased stress. Tr. at 82-83 Further, he feels better equipped to identify triggering situations. Tr. at 111-13. The Individual does not believe that his trauma has impacted either his ability to make decisions or his judgement.⁵ Tr. at 99-101. Although he took no issue with the accuracy of the facts in the DOE Psychologist’s report, he did disagree with the conclusion that he suffers from narcissistic tendencies. Tr. at 109.

After hearing the Individual’s testimony, the DOE Psychologist changed her initial opinion from the September 2021 report. Tr. at 117. At the time of the evaluation, she did not have information pertaining to his trauma or prior PTSD diagnosis. Tr. at 117. Accordingly, she understood his behaviors as “a personality disorder trait.” Tr. at 118. She summarized the diagnostic criteria of PTSD that she believes the Individual meets and acknowledged that there was some improvement in his symptoms and that some of the symptoms she had seen during the psychological evaluation were no longer present. Tr. at 119-22. The DOE Psychologist opined that while, as of the time of the hearing, the Individual did not meet all the diagnostic criteria for PTSD, he did have “a number of symptoms associated with PTSD.” Tr. at 122-23, 125-26. In her testimony, the DOE Psychologist described the Individual’s prognosis as “good” if he was addressing his issues.⁶ Tr. at 126-27. Acknowledging the Therapist’s opinion that the Individual needs a few more months of therapy, the DOE Psychologist was reluctant to state how many more therapy sessions the Individual needs to resolve his PTSD symptoms, as progress is dependent on the Individual’s needs. Tr. at 127-29. Although the Individual’s reliability had improved since the August 2021 psychological evaluation, the DOE Psychologist could not be certain about how the Individual’s reliability and judgment would be impacted in the event he were triggered. Tr. at 131. Accordingly, the DOE Psychologist feels she would “be able to speak more confidently [regarding the Individual’s] judgement and reliability” once the Individual has engaged in additional therapy “to [permit him to] be able to identify those specific warning signs [for triggering events] and then [engage in] a specific plan for how to handle them.” Tr. at 132.

⁵ The Individual’s immediate supervisor indicated in a letter that the Individual is “positive and encouraging” and that he “perform[s] his duties promptly without complaints.” Ex. A. Other supervisors and coworkers confirmed that the Individual “perform[ed] the duties assigned to him in a timely and responsible manner[.]” and that the Individual “did everything that was asked of him.” Exs. B, C, and D.

⁶ At the time of the hearing, the Individual was also participating in a 12-week group therapy program for Individuals in his profession. Tr. at 86-87; Exs. F, G, and H. The Individual testified that the peer-led group has assisted him in “dealing with [his] trauma[.]” Tr. at 88-89.

V. Analysis

Guideline I

The Adjudicative Guidelines indicate that an individual may mitigate Guideline I concerns 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) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government 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;
- e) There is no indication of a current problem.

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

Although the Individual initially sought treatment in 2019, he decided to discontinue treatment when he felt the stressors in his life had resolved. This was despite his Therapist's recommendation that he continue treatment to address his PTSD. The Individual returned to therapy in 2021, and through the therapy he received, he was able to connect his problematic behavior at work with the PTSD triggers he was experiencing. Although the Individual has been engaging in individual therapy and is on medication, the Individual has not progressed enough in his therapy to resolve all his PTSD symptoms. Specifically, both the DOE Psychologist and the Therapist testified that, while some of the Individual's symptoms have been reduced or completely resolved, the Individual continues to exhibit some PTSD symptoms. Accordingly, concern remains regarding the Individual's reliability and judgement in the event the Individual were to be confronted with a triggering condition or circumstance.

I find that the only mitigating factor that possibly applies in this case is listed in paragraph 29(b).⁷ However, given the questions surrounding the Individual's future conduct raised by the DOE Psychologist, I cannot find that his prognosis is sufficiently favorable to invoke this factor or determine that this factor, if applicable, alone would sufficiently resolve the security concerns raised by the Guideline I derogatory information.

⁷ Regarding the other mitigating factors listed in paragraph 29, I cannot find that the Individual has "demonstrated ongoing and consistent compliance with the treatment plan," given the relatively recent initiation of his current treatment plan. *See* ¶ 29(a). Nor can I find that there is a "low probability of recurrence or exacerbation" of the Individual's PTSD symptoms or that the Individual's condition is "temporary." *See* ¶ 29(c), (d). Lastly, I cannot find that there is "no indication of a current problem" regarding the Individual. *See* ¶ 29(e).

VI. 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has not 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 not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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