*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)
		)
Filing Date:	February 5, 2013	)
		) Case No.: PSH-13-0012
		)

Issued: July 17, 2013

Hearing Officer Decision

Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXX. (hereinafter referred to as "the individual") to hold an access authorization[1] 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual's access authorization should be granted.

I. Background

The individual is an applicant for a DOE security clearance in conjunction with his employment by a DOE contractor. In June 2012, the individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a DOE security clearance and, on September 21, 2012, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual to address concerns about various matters disclosed on the QNSP, including those related to the individual's psychological and emotional health. *See* Exhibits 8 and 9. Following the PSI, the

[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.

individual was referred to a DOE consulting psychologist for an evaluation which took place on November 2, 2012. *See* Exhibit 6.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns arising from the individual's psychological and emotional health, the LSO informed the individual in a letter dated January 9, 2013 (Notification Letter), that it possessed 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 fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (h) (hereinafter referred to as Criterion H).[2] *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced nine numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced six lettered exhibits (Exhibits A-F) into the record and presented the testimony of four witnesses, including that of himself and that of a forensic psychologist. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.[3]

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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 with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be

[2] Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability . . ." 10 C.F.R. §710.8(h).

[3] OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited one criterion as the basis for denying the individual's security clearance, Criterion H. Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines). Conduct involving such psychological conditions can raise questions about an individual's ability to protect classified information. With respect to Criterion H, the LSO relied on the November 4, 2012, report of the DOE consulting psychologist which concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR)* criteria for Depressive Disorder, Not Otherwise Specified (NOS), and Anxiety Disorder, NOS. Ex. 1 and Ex. 6 at 5.

Based upon the report of the DOE psychologist, the LSO properly invoked Criterion H.

IV. Findings of Fact

In September 2007, when the individual was 17 years old and a high school senior, he was diagnosed with sudden onset diabetes (type 1 – insulin dependent). He was hospitalized for three days to stabilize his medical condition. Ex. 7 at 9 – 10. The individual was reported to be "in denial" upon the initial diagnosis and, during his hospitalization, he was examined by a pediatric psychiatrist who diagnosed him with Adjustment Disorder, NOS. *Id.* at 11, 13. The psychiatrist's report noted that although the individual did not accept his diagnosis, he understood the need for careful management

and intended to be fully compliant. *Id.* The report concluded that the individual "was informed about difficulties teenagers have with chronic illness and the need to receive counseling *in the future if compliance with his treatment plan becomes a problem or he becomes depressed with having a chronic disease.* The role of [psychotropic] medication at this time is none. [The individual was] also informed that the therapist in the pediatric endocrinology clinic . . . is available for him if he should need counseling *in the future.*" *Id.* at 14 (emphasis added).

Since the individual's diabetes diagnosis (nearly six years ago), the individual has successfully managed his diabetes and has had no subsequent occurrences of ketoacidosis or hospitalization related to diabetes. The individual is consistent and diligent in his self-care, displays no discomfort with respect to his diabetes, and reports no embarrassment with respect to blood testing and insulin injections that need to occur in the presence of others. Tr. at 43 – 44, 64 – 68, 141.

Three months after the onset of the individual's diabetes, while he was still a high school senior, the individual had a heated and traumatic telephone conversation with his long-time girlfriend. *Id.* at 70 – 71. Immediately after the call ended, the individual took a handful of an over-the-counter medication (16 – 18 acetaminophen tablets) in an attempt to end his life. Ex. 7 at 3. When he became ill several hours later, he informed his mother that he had taken the pills and she took him to a hospital emergency room. Tr. at 73. He was admitted to the hospital for two days. Ex. 7 at 1.

The psychiatrist who attended the individual during the hospitalization which followed his suicide attempt diagnosed the individual with "Depression NOS." Ex. 7 at 4. The psychiatrist's report noted that, since being admitted to the hospital, the individual had not shown signs of any ongoing psychiatric disorder. *Id.* at 6. The psychiatrist spoke to the individual's group leader at his church and expressed his concerns that any counselors working with the individual should be alert to self-destructiveness and suicidal potential. *Id.* at 5. The individual was given information about available outpatient and emergency psychiatric resources. *Id.* The report noted that: the individual was not showing signs of ongoing poor judgment or seemed overwhelmed, and the individual was not interested in formal psychiatric follow-up, but was motivated to obtain counseling through elders at his church. The psychiatrist concluded that "[a]fter considering all of these factors, *we made the decision* not to hospitalize him involuntarily and *to allow him to pursue the counseling that he would like through his church.*" *Id.* at 6 (emphasis added).

Following this hospitalization, the individual pursued counseling through the church in which he was a member. Tr. at 87. At that time, he had been a member of that church for approximately four years and he has continued his involvement in the same church. Since his suicide attempt in December 2007, he has made no suicide attempts or he credibly reports no suicidal ideation. *Id.* at 75.

In June 2012, four-and-one-half years following his suicide attempt, the individual began working for a DOE contractor in a position that requires that he hold a security clearance. During the investigation of the individual's background, he disclosed his 2007 suicide attempt and subsequent hospitalization. The LSO referred the individual to a DOE

consulting psychologist who evaluated the individual in November 2012. The DOE psychologist concluded that the individual suffers from Depressive Disorder NOS and Anxiety Disorder NOS, and that these are conditions which cause, or may cause, defects in his judgment or reliability. Ex. 6 at 5.

In anticipation of the administrative review hearing, the individual was evaluated by a forensic psychologist/neuro-psychologist, whose dissertation was on insulin-dependent diabetes and the effect of executive function on depression. Tr. at 139 – 140. The individual's forensic psychologist evaluated the individual in April 2013 and concluded that, at that time, the individual did not meet the criteria for any psychiatric disorder. Ex. E at 12.

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 prescribed in 10 C.F.R. § 710.7(c)[4] and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be granted. The specific findings that I make in support of this decision are discussed below.

The DOE consulting psychologist and the individual's forensic psychologist, although having differing theoretical perspectives, are both duly qualified mental health professionals, who have conducted evaluations in this case which are consistent with the standards of their field. Each interviewed the individual and reviewed pertinent case histories; each also administered established psychological testing in completing their evaluations, *albeit* different tests. Ultimately, the two experts reached opposite conclusions. After careful review of the reports, analyses and testimony of the experts, I find that the conclusions of the individual's forensic psychologist are more persuasive.

Consistent with their differing diagnoses, the experts also presented different portraits of the individual. For the DOE consulting psychologist, the individual suffers from chronic stress and is unable to manage internal and external demands. Tr. at 285. The individual's forensic psychologist describes a stable, well-grounded, forward-thinking, goal-oriented person, who has a plan for his life and sets good goals. *Id.* at 138, 170 – 171. The latter description seems far more consistent with a person who has successfully managed a serious, chronic illness since his teenage years and has had no suicide attempts or suicidal ideations in nearly six years.

[4] Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

Based upon an evaluation that was conducted in April 2013, the individual's forensic psychologist concluded that the individual currently manifests no mental disorders.[5] *Id.* at 120, 143; *see* Ex. E. In reaching her conclusions, she administered ten established neuropsychological and psychological tests. In explaining the difference between the individual's earlier mental health and his current mental history, she emphasized the importance of considering the developmental stages of the brain (regarding judgment and decision-making) that the individual would have experienced between the ages of 17 and 23 :

> The prefrontal lobe, the largest part of the brain, houses the prefrontal cortex, which mediates the capacity to exercise good judgment and is one of the last brain regions to reach maturation, due to the developmental stages tending to occur in the back-to-front pattern. Brain research indicates brain development is not complete until sometime in the twenties due to the increase in myelin (lipid sheath covering axons that promotes connectivity). As myelin increases, there is a heightened flow of information between regions, whereby, the prefrontal cortex is gradually enabled to oversee and regulate behavioral responses initiated by more primitive limbic structures, which are the source of emotional behaviors. During the teen-age-years, individuals are not thinking about the effects of their behavior on others; this process requires insight and insight requires fully connected frontal lobes. Therefore adolescents rely more on input from the limbic system (primitive and emotional) for information to govern behaviors. The maturation of the judgment, decision-making, problem-solving, and behavioral regulation of [the individual's] frontal lobes has progressed in the last six years considerably, enabling an adult's processing. Ex. E at 6.

According to the individual's forensic psychologist, the maturation of the adolescent brain normally occurs in one's early 20's. The tests that she administered to the individual with respect to the executive or higher functioning of the brain confirmed that the individual has achieved such development at this point in his life. Tr. at 157. This neurological explanation is consistent with the guidance in the DOE's personnel security regulations that Hearing Officers consider the age and maturity of an individual, and pertinent behavior changes, in resolving questions of eligibility for access authorization. *See* 10 C.F.R. § 710.7 (c).

The DOE consulting psychologist testified[6] that he administered two tests to the individual: the Minnesota Multiphasic Personality Inventory – 2 (MMPI) and the

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[5] The individual's forensic expert also testified that, in addition to not having a mental disorder diagnosis under the DSM-IV, the individual did not have any other mental condition that causes, or may cause, a significant defect in his judgment or reliability. Tr. at 174 – 175.

[6] Two points in the testimony of the DOE's consulting psychologist's testimony that I found confusing, although did not affect my decision, were: (1) that the individual was experiencing "suicidal ideation" *unconsciously* (which seems inconsistent with the definition of the term) and (2) that the only appropriate treatment for the individual was two years of intensive psycho-therapy and that medication should never be used for people with depression who had attempted suicide in the past (which seems inconsistent with much of the literature of psychiatry). Tr. at 231 – 232, 272 – 273.

Rorschach test (popularly referred to as the "ink blot" test). Based upon the MMPI's embedded validity scales which assess a person's test-taking attitudes (i.e., whether the person taking the test has a tendency to minimize problems), he concluded that the individual's responses on the MMPI were invalid[7] and, therefore, he relied upon the individual's responses on the Rorschach test and the individual's personal history[8] in making his diagnosis. Tr. at 178, 180, 277 – 285. The DOE consulting psychologist emphasized that this is a diagnosis of the individual's current psychological health. When asked by DOE's counsel if these diagnoses were based solely on the testing or based on any current emotional state reported by the individual, he responded that it was based "not on any current emotional state." *Id.* at 202. He testified that research showed that the greatest majority of people who had the same pattern of responses on the Rorschach as the individual were depressed. *Id.* at 277. I find this analysis attenuated.

One of the aspects of the individual's personal history that concerned the DOE consulting psychologist was that the individual had twice been advised to seek psychological counseling and had failed to do so. *Id.* at 201 – 202. I do not believe that the medical records provided by the LSO fully supports this concern. When the individual was initially diagnosed for diabetes, the report of his pediatric psychiatrist clearly states that she provided the individual with counseling resources for his use *in the future* should he find that compliance with his treatment became a problem or he became depressed with having a chronic condition. Ex. 7 at 14. When the individual was hospitalized following his suicide attempt, the medical records suggest that professional counseling was discussed as an option (and probably recommended); however, the psychiatrist concluded his report by stating that the attending physicians "made the decision . . . to allow him to pursue the counseling that he would like through his church." *Id.* at 6. In light of the contemporaneous medical reports, I gave little weight to the concern that the individual ignored medical advice that he was given in 2007.

The individual does not believe that he currently needs psychotherapy and, based upon the medical evaluation by his forensic psychologist, this is a reasonable decision. The individual's forensic psychologist agrees that the individual has no problems or symptoms that would necessitate professional therapy at this time. Tr. at 142. Further, the individual has stated that he recognizes the value of psychology and psychiatry and would avail himself of the services of professionals in those fields in the future if he had mental health problems. Ex. 8 at 43 – 44. His church recognizes the limit of the

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[7] The embedded scales on two of the psychological tests administered by the individual's forensic psychologist also indicated the individual portrayed himself in the best possible light but did not invalidate such tests. They created a "caution" for the evaluator which the forensic psychologist indicated was incorporated in her conclusions. Tr. at 166 – 167. Missing from the reports and testimony of both experts were studies with respect to the relationship between embedded validity scales and a person's gender, ethnicity or religiosity.

[8] With respect to the individual personal history, the DOE consulting psychologist testified that he looked to the emotional residue from the individual being abandoned by his father when he was an infant and believing as a teenager that his mother suffered from mental illness. Additionally, he referred to the individual having twice rejected recommendations for counseling, which is discussed below in this section. Tr. at 283.

counseling that it can provide its members and encourages members to seek professional mental health services when appropriate. Tr. at 21 – 22.

Concerns were also raised with respect to statements made by the individual that he believed his diabetes was "a gift from God" and that his diabetes would be "cured" because he accepted Christ. *Id.* at 203 – 204. I believe such comments have been misinterpreted. The individual followed medical advice with respect to the treatment of his diabetes and he has done so conscientiously and consistently since his initial diagnosis as a teenager. His statements appear to me to reflect spiritual views of hope and support, which are consistent with many faith-based traditions.

Security concerns are triggered under Criterion H when a person has an illness or mental condition which in the opinion of a psychiatrist or licensed clinical psychologist could cause a significant defect in judgment or reliability. Those concerns may be mitigated when the person shows "no indication of a current problem." Adjudicative Guidelines at Guideline I, ¶ 29(e). In light of the persuasive analysis and testimony of the individual's forensic psychologist, I find that the individual does not currently have a "mental condition" as described by Criterion H and that he has resolved the Criterion H security concerns.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H. After considering all 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 brought forth sufficient evidence to mitigate the security concerns associated with Criterion H. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Hearing Officer
Office of Hearings and Appeals

Date: July 17, 2013