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July 26, 2011

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 3, 2011

Case Number: TSO-1015

This Decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") to hold a Department of Energy (DOE) access authorization.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should restore the Individual's access authorization.

**I. PROCEDURAL BACKGROUND**

The Individual is employed by a DOE contractor, and was granted a DOE access authorization in 1970. DOE Ex. 5. During a routine reinvestigation regarding his security clearance, the Individual disclosed during an interview with an Office of Personnel Management (OPM) investigator that he had engaged in physical altercations with his wife. DOE Ex. 10 at 56. In an August 2010 Personnel Security Interview (PSI), the Individual provided additional information about those incidents, admitting that he had approximately ten altercations with his wife between 1999 and 2010. DOE Ex. 9 at 26. After the PSI, the LSO referred the Individual to a DOE consultant-psychiatrist ("the DOE psychiatrist") for an evaluation. The DOE psychiatrist evaluated the Individual in October 2010 and issued a report. DOE Ex. 8. After reviewing the Individual's personnel security file, the LSO informed the Individual in a February 2011 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (h) and (l) (Criterion H and L, respectively). *See* Notification Letter, February 7, 2011. The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced ten exhibits into the record and presented the testimony of one

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<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

witness, the DOE psychiatrist. The Individual, represented by counsel, presented his own testimony, as well as the testimony of his wife, his supervisor, three current and former coworkers, and three friends. The Individual also tendered one exhibit. *Indiv. Ex. A.* See Transcript of Hearing, Case No. TSO-1015 (cited herein as “Tr.”).

## **II. REGULATORY STANDARD**

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. See 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) (the Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

## **III. FINDINGS OF FACT AND ANALYSIS**

### **A. Whether the LSO Properly Invoked Criteria H and L**

#### **1. The Individual’s Physical Altercations with His Wife and Related Facts**

The Individual married his wife in 1999. DOE Ex. 9 at 12. He and his wife had “marital problems” and often argued. *Id.* at 15. According to the Individual, the arguments led to physical confrontations, consisting primarily of shoving or hitting on the shoulder, approximately ten times during their marriage. *Id.* at 26-27. Most of the incidents happened early on in their marriage. *Id.* at 34. The Individual and his wife began attending counseling together in 2002 to work on their marital problems. *Id.* at 15. In 2004 or 2005, the Individual’s counselor determined that the Individual had difficulty managing his anger and recommended

that the Individual see his primary care physician in order to obtain a prescription for an antidepressant. *Id.* at 17, 20-23. The Individual has taken the medication prescribed to him and has found it helpful in managing his mood and anger. *Id.* at 23. Since he has been on his medication, the Individual and his wife have argued, but the arguments have not escalated to physical altercations as frequently as they had in the past. *Id.* at 33. The Individual and his wife last had an argument that turned physical in approximately April or May 2010. *Id.* at 32.

As noted above, due to concerns raised by the Individual's admission that he was involved in physical altercations with his wife, the LSO referred him to the DOE psychiatrist for an evaluation. Following the October 2010 evaluation, the DOE psychiatrist diagnosed the Individual with Personality Disorder, Not Otherwise Specified, with Avoidant and Narcissistic Features. DOE Ex. 8 at 14. The DOE psychiatrist noted that this was an illness or condition which causes, or may cause, a significant defect in the Individual's judgment or reliability. *Id.* at 17.

## **2. The Associated Security Concerns**

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); *see also* Adjudicative Guidelines, Guideline I, ¶ 27. It is well-established that a diagnosis of a mental health disorder raises security concerns under Criterion H. *See id.*, *Personnel Security Hearing*, Case No. TSO-0903 (2010); *Personnel Security Hearing*, Case No. TSO-0880 (2010).<sup>2</sup> Based on the DOE psychiatrist's diagnosis that the Individual meets the criteria for a personality disorder, I find that the LSO properly invoked Criterion H.

Criterion L concerns circumstances tending to show that the Individual is "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). It is well-established that criminal conduct, such as assault, raises doubts as to an individual's honesty, reliability and trustworthiness, and raises security concerns under Criterion L. *See* Adjudicative Guidelines, Guideline J, ¶ 30 ("Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."); *see also Personnel Security Hearing*, Case No. TSO-0507 (2007). This is true regardless of whether the conduct resulted in formal criminal charges. Adjudicative Guidelines, Guideline J, ¶ 31(c). Given the Individual's admission that he has been involved in incidents of violence with his wife, the LSO had sufficient grounds to invoke Criterion L.

## **B. Whether the Individual Has Mitigated the Security Concerns**

### **1. Criterion H – The Individual's Mental Health Condition**

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<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

At the hearing, the Individual did not dispute the facts cited in the Notification Letter. He recognized that he has had a problem controlling his anger in the past and he has taken steps to address it. Tr. at 145. Prior to the suspension of his access authorization, he saw his counselor off and on for approximately three years in order to gain insight on how to better communicate with his wife. Tr. at 145-46. As a result of the suspension of his access authorization and the related issues, he decided to begin seeing his counselor again in December 2010 for individual therapy, focusing specifically on addressing his anger issues.<sup>3</sup> Tr. at 147. The Individual noted that he is not proud of his physical altercations with his wife and he will not engage in that behavior again in the future. Tr. at 148. The Individual has found the counseling sessions helpful in addressing the causes of his anger problem. For example, he realized that he has always been shy and, over time, developed an inferiority complex. Tr. at 150. Through his work with his counselor, he has learned to communicate better, stopping to listen where the other person is coming from. Tr. at 151-52. As to his marriage, he has learned to calm down and listen to what his wife is saying, rather than immediately arguing with her. Tr. at 152. The Individual stated that he is a much happier person now and that his last serious argument with his wife was in April or May 2010, over one year before the hearing. Tr. at 166. He intends to continue seeing his counselor as long as the counselor believes it is necessary. Tr. at 156. In addition to his therapy, he continues to take his antidepressant medication, and finds that it helps manage his anxiety. Tr. at 164. He intends to keep taking his medication as prescribed. *Id.*

The Individual's wife acknowledged that, although the Individual is generally very laid-back, there have been incidents in the past where the Individual has pushed or shoved her. Tr. at 102-03. Those incidents were not very frequent, and occurred more often in the beginning of their marriage. Tr. at 104. She is not afraid of the Individual and she does not believe the Individual will become physical with her again. Tr. at 111. She stated that the counseling has made "a huge difference" and that she has noticed positive changes in the Individual's mood and behavior since he restarted his counseling. Tr. at 112. For example, she finds that he is much more open about his feelings, communicates better and apologizes when appropriate, and is generally more affectionate. Tr. at 105. She no longer feels like she has to "be careful" of what she says to him and he no longer believes she is criticizing him when she speaks to him. Tr. at 115. She does not remember the last time she and the Individual had an argument. *Id.*

In addition to the testimony from the Individual and his wife, several coworkers and friends testified regarding the Individual's character and demeanor. None of those witnesses had concerns regarding the Individual's behavior, with several describing the Individual as quiet or laid-back. *See, e.g.*, Tr. at 21, 28, 47, 59, 79. None of the Individual's co-workers or friends has seen the Individual lose his temper or behave otherwise inappropriately. Tr. at 16, 35, 49, 55, 73, 86.

After listening to all of the hearing testimony, the DOE psychiatrist presented an updated opinion. He stated that following his evaluation of the Individual, he had "major concerns" about the level of the Individual's anger, particularly toward his wife. Tr. at 187. The DOE

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<sup>3</sup> The Individual submitted a letter from his counselor confirming that he has engaged in therapy to "work on managing his anger." *See* Indiv. Ex. A. The counselor noted that the Individual "has worked diligently and with good motivation" and has "made much progress." *Id.*

psychiatrist was pleased to hear that the Individual reengaged in counseling to address his anger issues and is “highly encouraged” by the work the Individual is doing in therapy. Tr. at 191. The DOE psychiatrist noted as positive factors the fact that the Individual has not become violent with his wife in over one year and now has an increased awareness of the “intolerability of physical violence in the relationship.” Tr. at 192-93. The DOE psychiatrist concluded that, given the Individual’s greater insight into his condition, his willingness to address it through counseling, and the progress he has made, the Individual no longer has an illness or condition which causes or may cause a defect in his judgment or reliability, and the likelihood that he would manifest such a defect in the future was “low.” Tr. at 194, 198.

After considering the hearing testimony and reviewing the record as a whole, I find that the Individual has successfully mitigated the security concerns raised by his diagnosis of “Personality Disorder, Not Otherwise Specified, with Avoidant and Narcissistic Features.”<sup>4</sup> I am persuaded by the Individual’s testimony that he has actively engaged in treatment to address his anger management problem and that, having found the treatment beneficial, he intends to continue attending his therapy sessions and taking his medication. The Individual has demonstrated a willingness to address his condition. Based on my observations of the Individual at the hearing, as well as the testimony of his witnesses, he has clearly gained insight on how to manage his anger-related issues. This was especially corroborated by the Individual’s wife, who spoke candidly about the problems they used to experience in their marriage and the marked improvement in her relationship with the Individual since he began attending counseling. Finally, the DOE psychiatrist was particularly impressed by the Individual’s progress and determined that he no longer suffers from a condition that caused or may cause a defect in his judgment or reliability. Based on the foregoing, I find that the Individual has presented adequate evidence of rehabilitation and reformation from a mental illness or condition which causes or may cause a significant defect in his judgment or reliability and has, therefore, mitigated the Criterion H concerns cited in the Notification Letter. *See, e.g., Personnel Security Hearing, Case No. TSO-0822 (2010) (individual who engaged in counseling consistently and complied with medications demonstrated low risk of relapse); Personnel Security Hearing, Case No. TSO-0428 (2007) (concerns raised by individual’s mental health condition mitigated by evidence that individual’s condition was under control and risk of demonstrating a defect in judgment or reliability in the future was low).*

## **2. Criterion L – The Individual’s Unusual Conduct**

The incidents listed in the Notification Letter under Criterion L – the Individual’s physical altercations with his wife – are directly tied to the concerns regarding the Individual’s mental condition listed above under Criterion H. Because I have found that the Individual has mitigated

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<sup>4</sup> The Adjudicative Guidelines set forth several conditions which may serve to mitigate security concerns associated with an individual’s mental or psychological condition. Those conditions include: “(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 ... and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional; [and] (c) [a] recent opinion by a duly qualified mental health professional ... that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation.” *See* The Adjudicative Guidelines, Guideline I, ¶ 29.

the Criterion H concerns pertaining to diagnosis of “Personality Disorder, Not Otherwise Specified, with Avoidant and Narcissistic Features,” I conclude that he has also mitigated the related Criterion L concerns.

#### **IV. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual’s eligibility for a security clearance under Criteria H and L of the Part 710 regulations. I also find that the Individual has presented sufficient information to resolve those concerns. Therefore, I conclude that restoring the Individual’s suspended access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore the Individual’s suspended access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: July 26, 2011