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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: February 19, 2013 )  
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Case No.: PSH-13-0019

Issued : June 11, 2013

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**Hearing Officer Decision**

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Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization<sup>1</sup> 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 restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires that he hold a DOE security clearance. In September 2012, the individual scheduled an appointment with his employer's Designated Psychologist to discuss stress the individual was experiencing in his personal life and, during that consultation, the individual planned to surrender certain credentials he held as a participant in the Human Reliability Program

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<sup>1</sup> 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.

(HRP).<sup>2</sup> On the day of the scheduled appointment, the individual called in sick and drove to an isolated area to contemplate suicide. While at that location, he returned a telephone call from his supervisor and, during the conversation, revealed his thoughts. In a subsequent telephone conversation which included mental health professionals affiliated with his employer, the individual consented to family members coming to his location and taking him home.

This incident resulted in the individual's HRP duties being removed and was reported to the Local Security Office (LSO). *See* Exhibit 8. The LSO conducted a personnel security interview (PSI) with the individual on October 19, 2012, to allow the individual to provide additional information and address concerns regarding his eligibility for access authorization. *See* Exhibit 9. Following the PSI, the individual was referred to a DOE consulting psychologist for an evaluation which took place on November 30, 2012. *See* Exhibit 7.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns about the individual's mental health status, the LSO informed the individual in a letter dated January 7, 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).<sup>3</sup> *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 presented the testimony of one witness, the DOE consulting psychologist; the individual presented the testimony of five witnesses, including himself and his wife. The LSO submitted ten numbered exhibits into the record; the individual tendered no exhibits. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.<sup>4</sup>

## **II. Regulatory Standard**

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<sup>2</sup> The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. *See* 10 C.F.R. § 712.

<sup>3</sup> 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).

<sup>4</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).

### **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 (9<sup>th</sup> 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 restoring his 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). 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 cites one criterion as the basis for suspending 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). Such psychological conditions can effect an individual's conduct and raise questions about an individual's ability to protect classified information. With respect to Criterion H, the LSO relied on the December 5, 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 Adjustment Disorder with Anxiety and Depressed Mood, Chronic. Ex. 1 and Ex. 7 at 5.

The DOE psychologist specifically recommended that the individual receive individual counseling for at least six months following the September incident, with a focus on continued abstinence from alcohol, improvement of his coping skills and adjustment to personal situations over which he has no control. The DOE psychologist believed that successful completion of such counseling would allow the individual to return to a “non-problematic level of functioning.” *Id.*

In light of the information available to the LSO, the LSO properly involved Criterion H.

#### **IV. 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)<sup>5</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s access authorization should be restored. Restoring the individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

##### **A. Mitigating Evidence**

The DOE psychologist testified that he believed the individual’s traditional approach to life has been very straightforward, concrete and practical and that his associated coping mechanisms were ineffective once he was confronted with situations where he could not control the resolution. The accumulated stress from such situations eventually overwhelmed the individual, though he was likely unaware of his escalating stress, according to the DOE psychologist. Tr. at 83.

The individual does not contest the accuracy of the diagnosis by the DOE psychologist at the time it was made. *Id.* at 77. The individual identified four situations that led to his feeling overwhelmed in September 2012: a step-parent had experienced complications from surgery which resulted in the physicians recommending the commencement of hospice care for her; an in-law has suffered from permanent, debilitating illness for a considerable period of time which has necessitated the individual and his family residing

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<sup>5</sup> 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.

in his in-law's home in order to provide necessary care; a son was scheduled for trial on criminal charges; and a daughter with traumatic brain injuries resides with him and his wife. *Id.* at 56 – 59, 63, 77.

His son was scheduled to stand trial in mid-September 2012 on charges of sexual abuse of a minor, based on accusations brought by the son's estranged wife. The individual and his wife were witnesses to the facts upon which the charges were brought and the individual knows that the charges are false. The individual believed he would be unable to control his verbal reaction in court if his son were to be convicted of a crime that he did not commit. The individual scheduled an appointment with his employer's Designated Psychologist in order to discuss this situation. *Id.* at 56 – 58.

The evening before the individual's appointment with the Designated Psychologist, the individual's daughter had a physical altercation with her mother that required police involvement and resulted in the daughter's arrest and imprisonment. This was the fourth involvement by the police in situations relating to his daughter's behavior. His daughter suffered traumatic brain injuries in an accident several years ago that left her disabled and subject to volatile emotions and behavior. She resides with the individual and his wife. His worries about his daughter's incarceration were the immediate cause of the individual calling in sick the next morning and driving to an isolated area with a gun to consider suicide. *Id.* at 18, 55 – 59, 63.

As detailed above, the individual returned a telephone call from his supervisor and during the call revealed his location and that he was thinking about suicide. During a telephone conversation with his employer and its affiliated mental health professionals, he consented to family members meeting him and taking him home. *Id.* at 15, 59 – 60.

To the individual's credit, he began mental health counseling the following day, initially attending counseling once a week and, subsequently, once every two weeks. *Id.* at 15, 16. He had been in counseling for nine months as of the date of the hearing. *Id.* The individual has embraced the benefits of counseling and has included family members in sessions, has commenced joint counseling with his wife and has encouraged his wife to engage in individual counseling. *Id.* at 65, 68 – 70. He expressed the intention to continue in counseling. *Id.* at 71.

The individual's treating counselor testified as to the individual's work to development coping strategies and self-care skills. She believes that the coping skills that he has developed to date are meeting his needs and she has observed that his mood has stabilized. His prognosis is good and his counselor is primarily continuing therapy with him at this point in order to do couples counseling with him and his wife. *Id.* at 17, 22, 23.

The individual's testimony included discussion of new coping strategies for situations that were outside of his control, his work at acceptance of those situations and his implementing changes in his communication style in order to reduce conflict and avoid unnecessary escalation of stress. *Id.* 72 – 74, 77, 78. The DOE psychologist testified that it was apparent that the individual was trying to think and reflect prior to responding and

that this was a positive change for the individual. *Id.* at 89. The individual's family members testified to the changes they had noted in the individual following his commencement of counseling, including improved communication, activities reflecting self-care, calmness and more emotional openness. *Id.* at 30, 32 – 33, 34, 36, 38, 40, 44 45.

While the individual was contemplating suicide, he consumed a bottle of wine. Both his treating counselor and the DOE psychologist urged the individual to abstain from alcohol consumption. Ex. 7 at 5; Tr. at 16, 20. The individual reports abstinence from alcohol since that day in September, with the exception of a partial glass of wine at New Year's. He testified that he did not like the taste of the wine and did not finish the glass; he discussed the circumstances of the wine consumption and his reaction to it with his treating counselor. The individual testified that he has recognized improvements in both his physical and emotional health since he has become abstinent and further testified that he has no intent to drink alcohol in the future. *Id.* at 17, 26, 27, 67, 68, 70. His counselor believes it is important for the individual's success that he abstain from alcohol and she views him as having had "complete abstinence" for "all intents and purposes" since September 2012, notwithstanding his partial glass of wine at New Year's. *Id.* at 17.

#### **B. Review of Criterion H Security Concerns**

Following the psychological evaluation of the individual in November 2012, the DOE psychologist concluded that the individual was suffering from Adjustment Disorder with Anxiety and Depressed Mood, Chronic. Ex. 7 at 5. The DOE psychologist specifically recommended that the individual receive individual counseling for at least six months following the September incident, with a focus on continued abstinence from alcohol, improvement of his coping skills and adjustment to personal situations over which he has no control. *Id.*

With respect to abstinence from alcohol, both the treating counselor and the DOE psychologist indicated that the individual's use of alcohol did not appear to be long-standing and appeared to be an attempt at self-medicating to deal with stress. *Id.* at 20, 25, 85. There was no alcohol diagnosis given to the individual and the LSO raised no security concern with respect to alcohol. Both mental health professionals expressed satisfaction with the individual's abstinence in relationship to the treatment for Adjustment Disorder.

With respect to his diagnosis of Adjustment Disorder with Anxiety and Depressed Mood, Chronic, the DOE psychologist recommended at least six months of counseling. Ex. 7 at 5. The individual had completed nine months of counseling as of the date of the hearing. Tr. at 16. The DOE psychologist testified that as of the date of the hearing, that he would no longer diagnose the individual with Adjustment Disorder with Anxiety and Depressed Mood, Chronic. *Id.* at 89. Neither the treating counselor nor the DOE psychologist believed as of the date of the hearing that the individual had a mental condition or illness that caused, or could cause, a significant defect in his judgment or reliability. *Id.* at 24 – 26, 87, 90 – 91.

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 DOE psychologist’s testimony that the individual no longer meets the diagnostic criteria for Adjustment Disorder with Anxiety and Depressed Mood, Chronic, I find that the individual has resolved the Criterion H security concerns. *See Personnel Security Hearing*, Case No. PSH-12-0093 (2012).

## **V. 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 restored. 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: June 11, 2013