* 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:	November 30, 2011	)	
		)	Case No.: PSH-11-0028
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Issued: February 29, 2012

Hearing Officer Decision

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXX, ("the Individual") to hold a Department of Energy (DOE) access authorization.[1] 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 not restore the Individual's access authorization at this time.

I. BACKGROUND

The Individual is employed by a DOE contractor and has held a DOE access authorization since 2006. DOE Ex. 10. During a routine reinvestigation in connection with the Individual's security clearance, the Local Security Office (LSO) received potentially derogatory information, which prompted the LSO to refer the Individual to a DOE consultant-psychiatrist ("the DOE Psychiatrist") for an evaluation. The DOE Psychiatrist evaluated the Individual in September 2011 and issued a report. DOE Ex. 11. After reviewing the Individual's personnel security file, the LSO informed the Individual in an October 2011 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (h) (Criterion H). *See* Notification Letter, October 14, 2011. The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id*.

[1] 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.

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced 16 exhibits into the record and presented the testimony of one witness, the DOE Psychiatrist. DOE Exs. 1-16. The Individual, represented by counsel, presented her own testimony, as well as the testimony of her significant other, her supervisor, three co-workers, and a forensic psychiatrist ("the Individual's Psychiatrist"), who evaluated the Individual for the purposes of providing expert testimony in this proceeding. The Individual also tendered 20 exhibits. Indiv. Exs. A-T. *See* Transcript of Hearing, Case No. PSH1-11-0028 (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 Criterion H

1. The Individual's Mental Health Condition and Related Facts

The pertinent facts in this case are as follows. The Individual met and married her first husband in 1991 and they had one son together. DOE Ex. 11 at 3. Shortly after her son's birth, the Individual sought counseling due to problems in her marriage and was ultimately prescribed an antidepressant medication, Prozac. *Id*. at 3-4. The Individual participated in counseling periodically from 1991 to 1995. *Id*. The Individual and her first husband divorced in 1996, after which the Individual's depression increased and she experienced suicidal thoughts. *Id*. at 4. In 1997, the Individual's primary care physician diagnosed her with depression and again prescribed Prozac, which the Individual continued taking until approximately 2005. *Id*. at 4-5. In mid-2005, the Individual's physician diagnosed her with chronic depression, discontinued the Individual's use of Prozac, and prescribed another antidepressant, Effexor. *Id*. at 5.

The Individual moved to another state in mid-2005. She met her second husband in mid-2006 and they married six months later, despite having a very turbulent relationship. *Id*. at 6. A few months later, the Individual's teenaged son moved out of state permanently to live with his father. *Id*. The Individual's depression increased and she sought treatment from a psychiatrist ("Treating Psychiatrist 1"), who increased the dosage of Individual's Effexor prescription. *Id*. Shortly thereafter, the Individual divorced her second husband and moved back to her home state. *Id*. In August 2007, the Individual met with her physician and expressed concerns regarding the effectiveness of the Effexor. *Id*. The physician discontinued the Effexor and replaced it with another antidepressant, Lexapro, as well as a sleeping aid, Trazodone. *Id*. The Individual did not tolerate this change well; she experienced withdrawal symptoms and suicidal thoughts. *Id*. at 7. Within days, the Individual attempted suicide by taking an overdose of Trazodone. *Id*. The Individual was briefly hospitalized following her suicide attempt and, upon her release, began attending an intensive outpatient treatment program and meeting with a psychiatrist ("Treating Psychiatrist 2") as part of the program. Treating Psychiatrist 2 diagnosed the Individual with Bipolar Disorder, discontinued the Individual's Lexapro and Trazodone, and prescribed three mood stabilizers – Lamictal, Lithium, and Topamax. *Id*. at 8-9. The Individual met with Treating Psychiatrist 2 daily during the one-week treatment program, and then once or twice for medications management until early 2008. *Id*. at 9.

Over the next two years, the Individual moved between her home state and her second husband's home state several times, which resulted in her switching back and forth between the two treating psychiatrists. Consequently, the Individual's diagnosis and medications changed with each move. For example, in September 2007, one month after her suicide attempt, the Individual restarted treatment with Treating Psychiatrist 1, who disagreed with the Bipolar Disorder diagnosis by Treating Psychiatrist 2 and adjusted the Individual's medications by discontinuing the mood stabilizer Lamictal and prescribing to the Individual a new antidepressant, Celexa. *Id*. One month later, she moved again and saw Treating Psychiatrist 2, who disagreed with Treating Psychiatrist 1's diagnosis and adjusted the Individual's medication regimen by discontinuing the Celexa and prescribing a different antidepressant, Wellbutrin. *Id*. at 10. In February 2008, after the Individual moved again in order to attempt to reconcile with her second husband, she once again sought treatment from Treating Psychiatrist 1, who altered her medication regimen, discontinuing the Wellbutrin and lithium, and adding Abilify, a medication approved as an antipsychotic and antidepressant add-on. *Id*.

The Individual remarried her second husband in August 2008. *Id*. In November 2008, the Individual was evaluated by a DOE consultant-psychiatrist as part of a routine background investigation in connection with her security clearance. *Id*. at 10-11. The DOE consultant-psychiatrist diagnosed the Individual with Dysthymic Disorder and Major Depressive Disorder, in sustained full remission. *Id*. at 10; *see also* DOE Ex. 12. The DOE consultant-psychiatrist further concluded at that time that the Individual did not have an illness or condition which causes, or may cause, a significant defect in judgment or reliability. *Id*. The Individual's marriage deteriorated over the next year and, in September 2009, she and her second husband divorced for the second time. *Id*. at 11. The Individual continued seeing Treating Psychiatrist 1 and her medications remained stable. *Id*. She sees Treating Psychiatrist 1 approximately every six months for medications management. *Id*. She has not engaged in psychotherapy or other counseling. *Id*.

In April 2011, the Individual was subject to another reinvestigation regarding her security clearance. *Id*. at 12; *see also* DOE Ex. 14. In connection with this reinvestigation, the Individual's second husband was interviewed by an Office of Personnel Management (OPM) investigator. *Id*. The Individual's second husband initially gave favorable testimony regarding the Individual and stated that he considered her to be mentally and emotionally stable. *Id*. However, the next day, he contacted the OPM investigator, recanted his testimony from the initial interview, and made several derogatory allegations as to the Individual's mental and emotional stability, as well as her general character and trustworthiness. *Id*. Several months later, the Individual's second husband submitted to several prominent figures, both within DOE and in the public at large, a rambling, largely incoherent 55-page memorandum in which he makes several inflammatory accusations regarding the Individual's character, conduct, and mental state. *Id*. at 12; *see also* DOE Ex. 13. Because the memorandum contained potentially derogatory information regarding the Individual's mental condition, the LSO referred her to the DOE Psychiatrist for an evaluation. DOE Ex. 11.

Following the September 2011 evaluation, the DOE Psychiatrist diagnosed the Individual with Borderline Personality Disorder, a disorder which has caused a significant defect in the Individual's judgment in the past.[2] *Id*. at 14-18. The DOE Psychiatrist further noted that the

[2] The American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (2000) (DSM-IV-TR) defines Borderline Personality Disorder as follows:

> A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning in early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:
>
> (1) frantic efforts to avoid real or imagined abandonment;
> (2) a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation;
> (3) identity disturbance: markedly and persistently unstable self-image or sense of self;
> (4) impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating);
> (5) recurring suicidal behavior, gestures, threats, or self-mutilating behavior;
> (6) affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days);
> (7) chronic feelings of emptiness;

Individual's prognosis is "only fair, since she has had a very difficult childhood history, a pattern of dysfunctional personal relationships that worsened after her 2008 evaluation by [a DOE consultant-psychiatrist], and a continued reluctance to address her issues in psychotherapy." *Id*. at 18.

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).[3] Based on the DOE Psychiatrist's opinion that the Individual meets the criteria for Borderline Personality Disorder, I find that the LSO properly invoked Criterion H.

B. Whether the Individual Has Mitigated the Security Concerns

At the hearing, the Individual generally did not dispute the facts cited above, but did disagree with the DOE Psychiatrist's diagnosis. The Individual and her witnesses testified regarding the Individual's mental condition and her mental and emotional stability.

The Individual testified in detail regarding her family background, her mental health issues, and the treatment she has sought. Tr. at 106-33; 137-41. According to the Individual, she grew up in a "very tense" household, surrounded at times by physical and verbal abuse. Tr. at 108. She speculated that her difficult upbringing may have contributed to her marrying her first husband so young and staying with her second husband for so long, despite the many problems in that marriage. *Id*. The Individual acknowledged her past issues with depression, but noted that she sought psychiatric treatment to manage her condition and has been compliant in taking the medications prescribed to her. Tr. at 113-18, 129. According to the Individual, her mental condition has been stable since her August 2007 suicide attempt. Tr. at 129-30. She continues seeing Treating Psychiatrist 1 for medication management and takes her medications as directed. Tr. at 131-32. She acknowledged that she has not yet engaged in psychotherapy, but will do so in the near future if necessary to retain her security clearance. Tr. at 130, 145; *see also* Indiv. Ex. T (note from Individual's counsel indicating that the Individual has selected a therapist and scheduled her first appointment). However, she did note that she does not believe that she needs therapy at this time, although there are "things [she] can work on." Tr. at 145. The Individual's testimony regarding her treatment was corroborated by her significant other, who testified that

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(8) inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights);
(9) transient, stress-related paranoid ideation or severe dissociative symptoms.

DSM-IV-TR at 710.

[3] 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.

the Individual continues to meet with her psychiatrist and that she is "very consistent" in taking her medications. Tr. at 79, 94-97. The Individual's work colleagues also testified that they are aware that the Individual sees a psychiatrist and takes medications to manage a mental health condition. Tr. at 19, 41, 50.

The Individual testified that she currently feels stable and happy. Tr. at 133. She has a good relationship with her first husband and is satisfied with their partnership in parenting their son. Tr. at 64, 104. She has also limited contact with members of her family that caused her stress and sadness and has cut off all contact with her second husband. Tr. at 74, 109, 122. The Individual is currently in a stable, calm and loving relationship with her significant other. Tr. at 65, 126. She is also very close to her coworkers and can rely on them for support, if necessary. Tr. at 151. Regarding the Individual's mental and emotional state, the Individual's significant other testified that the Individual has never behaved in a way that would cause him to question her judgment or emotional state. Tr. at 71-72. He further stated that the Individual reacts appropriately to stressful or difficult situations. Tr. at 98. This sentiment was echoed by the Individual's work colleagues, who testified that the Individual has never let her personal problems affect her work and has always demonstrated sound judgment on the job. Tr. at 20, 24, 30, 32, 41, 47-48, 57.

Based on the foregoing, it is clear that the Individual readily acknowledges the fact that she has a mental health condition that requires treatment and has taken steps to manage that condition. Her personal life is much more stable than it has been in many years, since she has eliminated contact with her second husband and entered into a new, more peaceful relationship with her significant other. She has also managed to perform well and exercise good judgment at work, regardless of the varying degrees of upheaval in her personal life over the last several years. These factors mitigate, to some degree, the concerns raised by the Individual's mental state. Nonetheless, I cannot conclude that, at this time, the risk of the Individual experiencing a severe episode of depression or mental instability in the future is low enough to warrant restoration of her security clearance.

There is significant disagreement among the mental health experts in this case regarding the Individual's diagnosis and prognosis. The Individual's Psychiatrist, after evaluating the Individual and reviewing her background, diagnosed her with Depression, which he believes is "now under control." Tr. at 161. He noted that the Individual has been able to overcome a difficult childhood and troubled relationships and has become independent and successful. Tr. at 162. He disagreed with the DOE Psychiatrist's diagnosis of Borderline Personality Disorder, noting that a diagnosis of Borderline Personality Disorder is difficult to make after only evaluating an individual once. Tr. at 161. The Individual's Psychiatrist stated that the Individual had recently been administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), a personality assessment tool commonly used in the mental health field, which indicated that the Individual has some personality "traits or qualities," but they are not indicative of a personality disorder. Tr. at 164, 172; *see also* Indiv. Ex. A (results from Individual's January 2012 MMPI-2). The Individual's Psychiatrist stated that although he believes the Individual's Depression is "under control," and that she is currently stable, she could benefit from psychotherapy. Tr. at 166. He opined that, if the Individual engages in therapy in the future and continues seeing her

treating psychiatrist, her prognosis is good. Tr. at 185-86. However, without therapy, the Individual's prognosis was only fair. Tr. at 186.

Having heard the hearing testimony, including that of the Individual's Psychiatrist, the DOE Psychiatrist did not change his diagnosis of Borderline Personality Disorder. Tr. at 211. As an initial matter, the DOE Psychiatrist explained that the difference between Borderline Personality Disorder, a personality disorder, and Depression, a mood disorder, is important because personality disorders are more long-standing disorders that are slower to respond to treatment. Tr. at 215-16, 233-36. Borderline Personality Disorder can also be more disruptive because it is a condition that is susceptible to rapid onset in times of stress. Tr. at 235. Major depressive disorders, on the other hand, are more easily treated and tend to respond well to medications. Tr. at 234. In this case, the DOE Psychiatrist determined that the Individual met each of the nine criteria for Borderline Personality Disorder and found that the Individual's symptom profile was "pretty typical" for the disorder. Tr. at 201-03, 206. The DOE Psychiatrist acknowledged that he considered to some extent the information provided by the Individual's second husband, but indicated that he would have made the same diagnosis absent that information based on the Individual's background. Tr. at 208, 237. The DOE Psychiatrist described the Individual's prognosis as "only fair." Tr. at 214-16. He noted as positive factors the fact that the Individual appeared to be doing well and was in a stable relationship. Tr. at 214. However, the DOE Psychiatrist remained concerned about how stress might affect the Individual's mental state. *Id*. He opined that the Individual can be rehabilitated, but she needs "a year or two" of psychotherapy. Tr. at 226-27. The DOE Psychiatrist concluded that, as of the hearing, the Individual had a "moderate risk" of experiencing a "severe episode of suicidality or abnormal thinking," adding that stress increases the risk. Tr. at 236.

After considering the hearing testimony and reviewing the record as a whole, I cannot conclude at this time that the Individual has mitigated the Criterion H concerns cited in the Notification Letter.[4] The Individual has a long-standing history of a mental health condition, including a 2007 suicide attempt. The changes that the Individual has made in her personal life, including reducing or eliminating contact with people who caused her stress or otherwise brought turmoil to her life, are positive factors. The fact that she has sought treatment from psychiatrists in the past, and has been compliant in taking the medications prescribed to her, is also to her benefit. However, the Individual's lack of participation in psychotherapy as of the date of the hearing is of concern, particularly given that the DOE Psychiatrist and the Individual's Psychiatrist agree that therapy is indicated in the Individual's case. In addition, there have been significant disagreements among mental health professionals regarding the Individual's diagnosis, not only during this proceeding, but also in her treatment history. As noted by the DOE Psychiatrist, the distinction is important because the conditions with which the Individual has been diagnosed are

[4] 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.

very different and carry different prognoses. The uncertainty regarding the Individual's diagnosis raises some doubts regarding the appropriateness and efficacy of the Individual's treatment regimen. Nonetheless, regardless of the dispute as to the Individual's diagnosis, the DOE Psychiatrist and the Individual's Psychiatrist agreed at that hearing that, without having undergone psychotherapy, the Individual's prognosis was only fair. In light of these facts, I agree with the opinion of the DOE Psychiatrist that the Individual's risk of experiencing a future episode causing a defect in her judgment or reliability remains elevated.

Based on the foregoing, I find that the Individual has not presented adequate evidence of rehabilitation and reformation from a mental illness or condition which causes or may cause a significant defect in her judgment or reliability. Therefore, I cannot conclude that she has mitigated the Criterion H concerns cited in the Notification Letter.

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 Criterion H of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve those concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE 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 not restore the Individual's access authorization at this time.

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: February 29, 2012