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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 31, 2012 )  
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 ) Case No.: PSH-12-0144  
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Issued: June 10, 2013

**Hearing Officer Decision**

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX XXXXXXXX (hereinafter referred to as "the Individual") to maintain a security clearance under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For the reasons set forth below, I conclude that the Individual's security clearance should not be restored.

**I. BACKGROUND**

On July 31, 2012, the Individual reported to a Local Security Office (LSO) that he had been arrested on July 16, 2013, and charged with two counts of "First Degree Criminal Sexual Penetration of a Minor" and two counts of "Criminal Sexual Contact of a Minor." Exhibit 6 at 5; Exhibit 9 at 10. The LSO conducted a Personnel Security Interview (PSI) of the Individual on August 27, 2012, and then referred him to a DOE Psychologist who diagnosed the Individual as suffering from Personality Disorder Not Otherwise Specified (PDNOS).

Unable to resolve the security concerns raised by the criminal charges, the conduct underlying these charges, and the PDNOS diagnosis, the LSO initiated administrative review proceedings by issuing a letter (Notification Letter) advising the Individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO set forth the derogatory information at issue and advised that the derogatory information fell within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (l) (Criterion H and Criterion L,

respectively).<sup>1</sup>

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on January 3, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his present treating psychologist (the Treating Psychologist), his former treating psychologist (the Former Treating Psychologist), a psychiatrist hired as a consultant by his legal representative (the Psychiatrist) his estranged spouse (the Spouse), his criminal defense attorney, a polygraph technician, and the DOE Psychologist (the DOE Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0144 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9. The Individual submitted 18 exhibits, marked as Exhibits A through R.

## **II. STANDARD OF REVIEW**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting or continuation of 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 have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## **III. FACTUAL BACKGROUND**

The Individual is the father of two young boys, who were 6 and 8 years of age at the time of the incidents discussed below. The older boy (Victim One) was having academic difficulties and, in April 2012, began seeing a counselor (the Counselor) recommended by his pediatrician. On

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<sup>1</sup> The Notification Letter alleges that the Individual has: (1) “An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability,” 10 C.F.R. § 710.8(h); and (2) “[e]ngaged in any unusual conduct or is subject to any circumstances which tend 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).

June 30, 2012, Victim One and the younger boy (Victim Two) tickled each other's genitals in the presence of their mother and the Counselor. Tr. at 21; Exhibit 6 at 6. The Counselor then spoke to Victim One in private. The Spouse subsequently observed the Counselor asking Victim One: "did your dad touch you?" Tr. at 24. Victim One responded by stating "yes."<sup>2</sup> *Id.* The Counselor, as required by law, contacted the local child protection authorities and reported her concerns.<sup>3</sup>

On July 5, 2012, the child protection authorities informed the police of the Counselor's allegations and placed the Spouse and two sons in a safehouse. On that day, a police detective (the detective), a forensic interviewer, and a child protection caseworker met with the Individual's wife and two sons at the safehouse and interviewed both boys. Exhibit 6 at 14. The interviews of both boys were audio-visually recorded and the resulting record is hereinafter referenced as the "Safehouse Tape" (although it was actually recorded onto a DVD disk).<sup>4</sup> *Id.*

During the safehouse interview, Victim One stated that the Individual "touches my private parts." Exhibit 6 at 14. Victim One further stated that when the Individual touches Victim One's genitals and bottom, he does so with his hand and it tickles. *Id.* Victim One stated that when this happens, the Individual is "really happy." *Id.* Victim One made a tickling motion with his hand to try and show what his father was doing at the time. *Id.* The Incident/Investigation report prepared by the detective (the Police Report) states that Victim One then "looked down toward his penis and then grabbed it quickly over his clothing." *Id.* Victim One reported that the Individual touches his brother's genitals and bottom too. *Id.* at 15.

Victim Two also reported that the Individual touches his genitals and bottom. Exhibit 6 at 16. Victim Two also reported that his brother, Victim One, touches his genitals. *Id.* Both Victim One and Victim Two reported that when the Individual touches their bottoms, it is on "the inside." *Id.*

At the conclusion of the safehouse interviews, the victims' mother, the Spouse, was interviewed. Exhibit 16 at 16. The Police Report states, in pertinent part, that:

She does believe [the children] and is pursuing a divorce and a restraining order<sup>5</sup> while [the Individual was on travel]. . . . [She] admitted that she has been very concerned about the boys touching themselves and each other since they were 4

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<sup>2</sup> The Counselor then asked Victim Two the same question, but Victim Two did not answer. Tr. at 24.

<sup>3</sup> The Counselor apparently submitted a written report to the child protection authorities. This report does not appear in the record. However, it is referenced in both the Affidavit for Arrest Warrant and the Incident/Investigation Report prepared by the detective.

<sup>4</sup> The only record of the safehouse interviews of Victim One and Victim Two appearing in the record are portions of the Affidavit and the Police Report prepared by the detective. The Individual's attorney is in possession of a copy of the Safehouse Tape. At the hearing, in response to the Individual's representative's repeated argument that the Safehouse Tape clearly exonerates the Individual, I suggested that the Individual submit a copy of the Safehouse Tape into the record. The Individual's attorney did not do so. Tr. at 288-289.

<sup>5</sup> On July 7, 2012, the Spouse provided the detective with a copy of a restraining order against the Individual that she had obtained from a local court. Exhibit 6 at 17.

and 2 years old. She didn't like it and always told them to stop but thought that it may be 'normal.' She told us that [Victim One] touches himself 'all of the time under his clothes,' [Victim Two] touches himself under his clothes as well, but not as often. . . . The boys touch each other over clothing approximately 3 times a week and touch each other when they are in the bathtub together, when they are naked. [The Individual's spouse] did say that she has seen [the Individual] give the boys, 'all over the body tickles' (including the genital area) but did not think much of it. . . . She wants to stay in a shelter to protect the lives of her children and herself.

Exhibit 6 at 16.

On July 6, 2012, police issued a warrant for the Individual's arrest, charging him with two counts of "First Degree Criminal Sexual Penetration of a Minor" and two counts of "Criminal Sexual Contact of a Minor." Exhibit 9 at 10. Law enforcement officials arrested him on July 16, 2012. An Affidavit for Arrest Warrant (the Affidavit) prepared by the detective reports that the Counselor stated that she had observed the Individual being verbally abusive to his children and to his spouse. Exhibit 6 at 6-7. The Affidavit states that Victim One informed the Counselor that the Individual hits him when his mother is not around and told him not to tell the Counselor about it and that his father "threatened to get really mean and hurt their mom if they talked." *Id.* The Counselor also informed child protection authorities that Victim One "touches himself all the time" and that she had observed the Individual's other son, Victim Two, touch himself. The Counselor reported that both boys touch each other's genitals. *Id.*

On July 7, 2012, Victim One received a Child Sexual Abuse Examination (the CSA Examination) administered by a nurse (the Nurse). This CSA examination consisted of a medical physical examination and forensic interview of Victim One. During the CSA Examination, Victim One stated that the Individual had touched his genitals and bottom with his hand. Exhibit 7 at 5. Victim One stated that the Individual had touched him underneath his clothes and that it had happened on more than one occasion. *Id.* Victim One said "it felt like tickling me." *Id.* The Nurse issued a report in which she stated that her examination had found no physical injuries and that "child sexual abuse can neither be confirmed or excluded." *Id.* at 13.

On July 18, 2012, and July 23, 2012, Victim One and Victim Two were interviewed by an independent social worker (the Independent Social Worker) at the Spouse's request. Exhibit D at 1. The Independent Social Worker recorded and transcribed his interviews of Victim One and Victim Two. Victim One reported: "my dad touched my private parts." *Id.* at 2. Victim One said that the touching "started to burn" and then said it "tickled." *Id.* at 2. When Victim One was asked how long the touching lasted he replied "an hour." *Id.* Victim One indicated that the Individual had tickled him on his genitals. *Id.* Victim Two also reported that the Individual had tickled him "in the privates." *Id.* On August 6, 2012, the Social Worker issued a report in which he opined:

I see no indication that the tickling offered was of a sexual nature. I do not believe it is appropriate to tickle anyone in their private parts, yet if there was sexual

intent by their father it was not revealed in how each child responded to my questioning. . . . **[I]t is my conclusion that I see no evidence of inappropriate sexual contact from my interactions with these boys.**

Exhibit D at 1 (emphasis in the original).

On August 22, 2012, the LSO conducted a PSI of the Individual. During the PSI, the Individual repeatedly denied sexually abusing his sons. *Id.* at 16, 29, 36. He also denied being verbally or physically abusive to his wife. *Id.* at 32-33, 45. The Individual claimed that the Counselor had a grudge against him, blamed him for his son's problems, and tried to get his wife to divorce him. Exhibit 9 at 15. He claimed that the Counselor was "after me" because she hated men. *Id.* at 37. The Individual also said that his wife was informed that she would lose the children if she did not file for divorce. *Id.* at 16-17. The Individual indicated that the restraining order filed against him by his wife had been lifted at his wife's request. *Id.* at 18-19. He claimed that although the request for the restraining order was in his wife's handwriting, it had been dictated to her by the child protection authorities. *Id.* at 20. The Individual claimed that his sons were confused by the questions that were asked of them, claiming that the boys were confused about the meaning of "private parts" and that when the boys were asked if the Individual had touched them inside their bottoms, they said "yes" meaning that their bottoms had been touched indoors. *Id.* at 23. The Individual also claimed that Victim One was making the accusations in order to get revenge. *Id.* He claimed that Victim One had put nails under his truck's tires, and given him several flats. *Id.* The Individual claimed he had never tickled his son's private parts, claiming he had made an "extreme effort" to avoid tickling them there. *Id.* at 81-82. The Individual also asserted that his sons had been coached to accuse him of child abuse. *Id.* at 82-83. The Individual stated that his wife now believes that he did not abuse his sons stating: "whatever brain washing they had going on with her initially she got over it pretty quick when she got home and started talking to the boys by herself, you know, away from all these people who were trying to influence that." *Id.* at 85.

On October 1, 2012, the DOE Psychologist conducted a psychological evaluation of the Individual. On October 4, 2012, the DOE Psychologist issued a report in which he opined that the Individual met the criteria for PDNOS set forth in the Diagnostic and Statistical Manual-Fourth Edition (Text Revision) (DSM-IV-TR). Exhibit 4 at 8. The DOE Psychologist further opined that PDNOS is an illness or mental condition which causes, or could cause, a significant defect in the Individual's judgment and reliability. *Id.* at 12.

On September 5, 2012, the local prosecutor issued a Nolle Prosequi (a formal decision not to continue with prosecution) dismissing criminal charges against the Individual "because of insufficient evidence and the interest of justice." Exhibit 8 at 2. The Individual moved back into the family home with the Spouse and children shortly thereafter. However, the child protection authorities again took the children into custody on September 25, 2012. Tr. at 52. The child protection authorities returned the children to the Spouse when the Individual agreed to move out of the family home. *Id.* at 56. At the time of the hearing, the Individual had been allowed to move back into the family home with the Spouse and Victims One and Two. *Id.* at 57.

#### IV. DEROGATORY INFORMATION AND SECURITY CONCERNS

The record shows that the Individual was criminally charged with two counts of First Degree Criminal Sexual Penetration of a Minor” and two counts of “Criminal Sexual Contact of a Minor.” Such serious criminal conduct raises security concerns under Criterion L. “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.” *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) Guideline J at ¶ 30. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guideline E at ¶ 15.

Regarding Criterion H, the record shows that a DOE Psychologist has diagnosed the Individual with PDNOS. An opinion by a duly qualified mental health professional that the individual has “a condition . . . that may impair judgment, reliability, or trustworthiness” may raise a security concern and be disqualifying. Adjudicative Guideline I at ¶ 28. “Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guideline D at ¶ 12.

#### V. ANALYSIS

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, an individual must produce evidence sufficient 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); *see also Department of Navy v. Egan*, 484 U.S. 518, 532 (1988) (*Egan*) (security clearances will be granted only when “clearly consistent with the national interest”); *Personnel Security Hearing, Case No. PSH-13-0011* (2013); *Personnel Security Hearing, Case No. PSH-12-0100* (2012), and cases cited therein.<sup>6</sup> The regulations and the case law further instruct me to resolve any doubts concerning the Individual’s eligibility for access authorization in favor of the national security. *Egan*, 484 U.S., at 532 (“the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials”); 10 C.F.R. § 710.7(a). Accordingly, unlike a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt, the standard in this proceeding places the onus on the individual because it is designed to protect national security interests. An individual, however, 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

<sup>6</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h).

After careful consideration of the record, I find that the Individual has not sufficiently mitigated the security concerns raised under Criteria H and L.

### **Criterion L**

At the hearing, the Individual denied that he had abused his sons, Victim One and Victim Two. In support of his contention, the Individual raised several arguments.

First, he asserted that the criminal charges were dismissed by the local prosecutor. Exhibit 8. He argued that this dismissal proves that he was unjustly accused and resolves the security concerns raised by his arrest for First Degree Criminal Sexual Penetration of a Minor and two counts of Criminal Sexual Contact of a Minor. I find this argument to be without merit. Derogatory information indicating that an individual has engaged in illegal activity is not necessarily resolved by a favorable adjudication in a criminal proceeding. Adjudicative Guidelines at ¶ 31(c); *Personnel Security Hearing, Case No. PSH-13-0011* (2013); *Personnel Security Hearing, Case No., PSH-12-0130* (2012); *Personnel Security Hearing, Case No. PSH-12-0097* (2012).

Second, the Individual attempted to discredit the Counselor and the detective by portraying them as overzealous, unprofessional and misguided. On a number of occasions during the hearing, witnesses appearing on behalf of the Individual cast negative aspersions upon the Counselor. At the hearing, the Spouse testified that the Counselor suggested she was “a battered woman” and suggested that she divorce the Individual and remove her children from him. *Id.* at 20. The Spouse testified that the Counselor was “physically upset” when she indicated that she wanted to “give her marriage a chance.” *Id.* at 21. The Spouse testified: “I told [the Counselor] that I waffled on the divorce, I wasn’t going to do it, and within 10 or 15 minutes, she found sexual abuse.” *Id.* at 51.

At the hearing, the Spouse denied the veracity of the statements attributed to her in the Affidavit and Police Report and denied that she had made them. Tr. at 61-64, 80. The Spouse did admit expressing a concern about the children touching themselves. *Id.* at 88. The Spouse testified that she informed the child protection social worker and detective that she had observed full body tickles, but no tickling of the genitals. *Id.* at 29. The Spouse repeatedly testified that she informed the detective on several occasions that the prosecution of the Individual was a “mistake” because the children were confused. Tr. at 29, 36-37, 42, 44. The Spouse testified that her actions, including moving into the shelter, were motivated solely by her desire to maintain custody of her children. *Id.* at 64, 84. She testified that the child protection social worker and detective threatened to take the children away from her, and only allowed her to keep the children under four conditions: (1) that she file a restraining order against the Individual; (2) that she file for divorce from the Individual; (3) that she change the locks on her family home; and (4) that she move into a protective shelter with the children. *Id.* at 30-31, 64, 84. She testified that she agreed with these conditions solely in order to avoid having her children placed in foster care. *Id.* at 31. The Spouse testified that when she placed the restraining order, “the

woman there at the safe house walked me through and told me what to write.” *Id.* at 32. According to the Spouse’s testimony, she only wrote what she was told to write in the restraining order application. *Id.* at 32. She also testified that she expanded her statement in the restraining order application in order to warn the Individual about “what the events were.” *Id.* at 32-33.

After carefully reviewing the evidence in the record, I find no basis to conclude that the Counselor misrepresented the children’s statements or coached them to make the accusations. The Spouse testified that she observed the children touching each other’s genitals in the Counselor’s presence immediately before the Counselor asked Victim One about the possibility of sexual abuse.

I further find no credible evidence to support the Individual’s assertion that the detective fabricated evidence in the Affidavit and the Police Report. While some of the Spouse’s testimony contradicts the statements attributed to her in those documents, I did not find her testimony on this issue to be credible. The Spouse testified that she was cooperating with the police and child protection authorities at the time those documents were prepared. I find that the statements attributed to the Spouse in those documents appear consistent with that cooperation.

More importantly, even if I attribute no weight to the Counselor’s reports of abuse and the information appearing in the Affidavit and the Police Report, the remaining derogatory information (i.e. the children’s statements and the reports of the children touching each other’s genital areas) in the record continues to raise unresolved doubts about the Individual’s conduct and behavior.

At the hearing, the Individual presented the testimony of a polygraph technician who testified that the Individual truthfully answered four questions: (1) “Have you ever had skin-to-skin sexual contact with either of your sons’ genitals?” (2) “Have you ever had skin-to-skin sexual contact with either of your sons’ anal areas?” (3) “Have you ever penetrated the anus of either of your sons?” and (4) “Have you ever had skin-to-skin contact with either of your sons for sexual purposes?” According to the polygraph technician, the Individual answered “no” to each of these questions. Tr. at 125-126. The polygraph technician testified that the results of polygraph tests using the method he employed, the “Utah Method,” have been scientifically validated. Tr. at 119.

I assign no probative value to the testimony of the polygraph technician or the results of his polygraph examination of the Individual. As an initial matter, I find that the Individual could have answered each of these four questions truthfully, and have still sexually abused Victim One and Victim Two. Moreover, the United States Supreme Court has specifically held that “there is simply no consensus that polygraph evidence is reliable.” *United States v. Scheffer*, 523 U.S. 303, 309 (1998) (*Scheffer*). “There is simply no way to know in a particular case whether a polygraph examiner’s conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph examination.” *Scheffer*, 523 U.S. at 312.

The Individual also claimed that the Safehouse Tape exonerates him by showing that the children were confused by the meaning of “private parts” and the meaning of “inside” their bottoms. The Individual did not submit a copy of the Safehouse Tape into the record, even though I suggested



at the hearing that he do so. Tr. at 289. Instead, the Individual offered the testimony of the Spouse, who claimed that after watching the Safehouse Tape she was convinced her children were confused. The Individual's criminal defense attorney, testified that the prosecution dismissed the case after viewing the Safehouse Tape. The Psychiatrist testified that the Tape does not support the allegations that the Individual sexually abused his sons. Because the Individual elected not to submit a copy into the record, I am left with doubts whether the Safehouse Tape mitigates the criminal conduct at issue. If the Individual was truly confident that the Safehouse Tape exonerated him, he should have submitted a copy of it into the record.

The Individual next contended that the touching of the genitals reported by his sons on five occasions was actually just harmless tickling which might have resulted in his inadvertently grazing their genitals and bottoms. However, the accounts of the Individual's touching of his son's genitals appearing in the record consistently describe more than innocent tickling. Moreover, the record includes numerous observations from a number of sources of the two children engaging in inappropriate touching of themselves and each other.

The Individual cited the willingness of the child protection authorities to allow the Individual to return to residing with his children as evidence that they no longer believe that he sexually abused them. However, in the present proceeding, the Individual must convince me, not the child protection authorities, that he did not sexually abuse his sons. Moreover, I do not have the enough information in the record to conclude that the child protection authorities have in fact absolved the Individual.

The Spouse testified that she "has no doubt that [the Individual] has never sexually molested [Victim One and Victim Two]." *Id.* at 65. She also testified: "I've always believed my kids. Always." *Id.* at 84. In support of her belief that the Individual did not abuse her children, the Spouse testified that Victim Two told her that: "Daddy doesn't touch bad." Tr. at 35. She further testified that when she asked Victim One where his private parts were, he indicated under his arms, chin, belly, and legs. *Id.* at 36. The Spouse admitted, however, that Victim One then identified his genitals and bottom as private parts and indicated that he meant his genitals and rear when he said the Individual had touched his private parts. *Id.* The Spouse testified that the Nurse informed her that she wasn't sure if the children knew what touching means and that the Nurse believed that the children had been tickled and perhaps the genitals had been brushed during the tickling. Tr. at 47. After talking with the nurse and the Independent Social Worker, and reviewing the Safehouse Tape, she became convinced that there was no sexual abuse. *Id.* at 39-42, 48-49.

After carefully reviewing all of the evidence in the record, I find that the Individual has not convinced me that he did not sexually abuse his sons. On at least five occasions, one or both of the Individual's sons reported that their father had tickled or touched their private parts to trained interviewers. While these allegations were made by a six-year-old and an eight-year-old and contain a number of inconsistencies and incongruities, the accounts provided by the Individual's sons repeatedly indicate that the Individual touched their genitals. The Individual has been unable to mitigate these accusations in this administrative proceeding. In order for me to confidently conclude that the Individual did not sexually abuse his sons, I would have to be convinced that the Counselor was lying and acting in a thoroughly unprofessional manner, the

detective perjured herself when she submitted the Affidavit to a local court, and that two six and eight-year-old boys repeatedly lied about their father. Accordingly, I find that he has not resolved the security concerns raised under Criterion L.

### **Criterion H**

I further find that the Individual has not mitigated the security concerns raised under Criterion H by his PDNOS diagnosis. The Individual has challenged the DOE Psychologist's finding that he suffers from PDNOS by offering the testimony of the Former Psychologist, the Treating Psychologist, and the Psychiatrist, and by attempting to discredit the DOE Psychologist by showing that his report contained a number of typographical and factual errors. These typographical and minor factual errors, in my opinion, do not detract from the validity of the Report's conclusions.

The Former Treating Psychologist testified that she had treated the Individual for Adjustment Disorder with Anxiety and Depression. Tr. at 240. She testified that she saw the Individual on 14 occasions between October 4, 2012 and February 7, 2013. *Id.* She testified that the Individual has good judgment, and a stable personality. *Id.* at 240-242. She did not believe that he had any personality disorder. *Id.* at 243, 245-246. When I asked her to explain why she concluded that the Individual did not suffer from any personality disorder, she responded by expounding a list of personality disorder traits and opining that none of them applied to the Individual. *Id.* at 245-246.

The Treating Psychologist testified that he has met with the Individual a total of 11 times. *Id.* at 180. He testified that he had read the DOE Psychologist's Report, had viewed the Safehouse Tape and had discussed the case with two child protection employees. *Id.* The Treating Psychologist testified that the Individual does not suffer from a personality disorder. *Id.* at 180-186. He noted that the Minnesota Multiphasic Personality Inventory (MMPI) administered to the Individual by the DOE Psychologist showed that the Individual's overall profile was within normal limits. *Id.* at 184. He further contended that the Rorschach Test administered to the Individual by the DOE Psychologist showed that the Individual has a number of personality "assets." *Id.* at 184, 194. He further testified that the Counselor has a "confirmation bias" in favor of finding sexual abuse.<sup>7</sup> *Id.* at 197. The Treating Psychologist opined that the Individual was not sexually abusing his sons. Most importantly, the Treating Psychologist admitted that if the Individual had been sexually abusing his sons, the Individual may well have had a personality disorder. *Id.* at 204.

The Psychiatrist testified that he had viewed the Safehouse Tape, and opined that it does not support "the allegations that have been made," but rather exonerates the Individual. *Id.* at 222-223. The Psychiatrist suggested that the DOE Psychologist's finding that the Individual has PDNOS is flawed because the DOE Psychologist believed the allegations of sexual abuse against the Individual. *Id.* at 224, 234. The Psychiatrist testified that because the DOE Psychologist has not viewed the Safehouse Tape or interviewed the Spouse, and has instead relied upon

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<sup>7</sup> This testimony was elicited by an inappropriate question posed by the Individual's attorney, specifically: "[The Counselor] told [the Spouse] that most of the kids she sees have had some sort of sexual abuse." Tr. at 196. There was no evidentiary foundation in the record supporting the assertion made by the Individual's attorney.

information in the police reports, he had wrongfully concluded that the Individual had sexually abused his sons. *Id.* at 224-225. The Psychiatrist testified that, in his clinical judgment, he could tell that the Individual was being honest when he denied abusing his sons. *Id.* at 227-229. The Psychiatrist stated that it was not just his opinion, but the opinion of the child protection authorities and the opinion of the prosecution that the Individual did not sexually abuse his children. *Id.* at 226. The Psychiatrist further testified that an eight year-old who places his hand in his pants when anxious and that six and eight-year-old brothers who touch each other's genitals in the bathtub were just exhibiting "normal" behavior. *Id.* at 231-232. I found the Psychiatrist's testimony to be lacking in credibility. The only basis provided by the Psychiatrist for his disagreement with the PDNOS diagnosis was that it was based upon the DOE Psychologist's assumption that the Individual sexually abused his sons. Since I have found that the Individual has not shown that he did not abuse his sons, I find that the Psychiatrist's analysis to be unconvincing.

The DOE Psychologist observed the testimony of each of the other witnesses prior to his own testimony. The DOE Psychologist testified that there is evidence, other than the children's allegations, which supports his finding that the Individual sexually abused his children, including Victim One's history of placing nails under his father's truck tires, an eight-year putting "his hands in his crotch when he is nervous in front of a woman who he has barely met, and children touching each other's genitalia in the bathtub (which should had ended by age six). *Id.* at 253-255. The DOE Psychologist noted that the children had reported sexual abuse on several occasions to a number of different professionals. *Id.* at 256-25. The DOE Psychologist testified that the testing supported his PDNOS diagnosis, since it showed that the Individual was being deceptive. *Id.* at 259. The DOE Psychologist testified that the Individual's MMPI results showed a normal profile, when in fact, his treating Psychologists were reporting an adjustment disorder with anxiety and depression and he was in the midst of being criminally prosecuted for sexually abusing his sons. *Id.* at 259-260. The DOE Psychologist testified that the Individual's Adjustment Disorder, anxiety, and depression should have been reflected in his MMPI if he was giving honest answers. *Id.* at 260-261. The DOE Psychologist also testified that the Individual's Rorschach Test contradicts his MMPI results since it reflects his inner turmoil. *Id.* at 261-268. The DOE Psychologist further noted that the Rorschach Test results suggested that the Individual: "tends to be inflexible and rigid in his thinking," "is a close minded person who rarely changes his thinking," has indications of impulsive behavior, "considers too little information before making a decision" "has oppositional tendencies associated with feelings of anger and resentment toward people and the world, in general" and is "at risk for errors in judgment," which are all traits of a person with a personality disorder. *Id.* The DOE Psychologist also noted the lack of remorse on the Individual's part. *Id.* at 282.

I found the DOE Psychologist's testimony to be highly credible. While the Treating Psychologist and the DOE Psychologist disagree about the proper interpretation of the MMPI and Rorschach Test results, the Treating Psychologist, the Psychiatrist, and the DOE Psychologist each agree that their disagreement about validity of the PDNOS diagnosis turns upon the underlying issue of whether or not the Individual sexually abused his sons. Since I have found that the Individual has not resolved the doubts raised by his children's accusations, I find that the Individual has not resolved the doubts arising from the PDNOS diagnosis. Moreover, based on the evidence before me, I find that the Individual has not shown any

rehabilitation or reformation from his PDNOS because he has not been treated for that condition. Accordingly, I find that the Criterion H allegations before me remain unresolved.

## **V. CONCLUSION**

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criteria H and L. Therefore, 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. Accordingly, I find that the Individual's security clearance should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: June 10, 2013