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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: September 6, 2013 )  
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Case No.: PSH-13-0103

Issued: December 23, 2013

**Hearing Officer Decision**

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXXX XXX(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 granted.

**I. BACKGROUND**

On January 29, 2013, the Individual completed and submitted a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO). In this QNSP, the Individual admitted that he had used a neighbor's internet connection without permission on several occasions in 2010 and 2011, and had downloaded copyrighted software and media to his computer without permission from the copyright holders from 2000 through 2006. Exhibit 7 at 18-19. On February 14, 2013, the Individual was interviewed by an Office of Personnel Management (OPM) investigator. During this interview, the Individual stated that he has "struggled with an addiction to pornography since he was 11 years old." Exhibit 9 at 62. The LSO conducted a Personnel Security Interview (PSI) of the Individual on May 9, 2013, and then referred him to a DOE Psychologist who diagnosed the Individual as suffering from Other Specified Paraphilic Disorder (OSPD), a condition that the DOE Psychologist opined can cause significant defects in his judgment or reliability. Exhibit 6 at 8.

Unable to resolve the security concerns raised by the Individual's conduct, and the OSPD 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).

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 September 9, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse, a DOE personnel security specialist, and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-13-0103 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 11. The Individual submitted seven exhibits, marked as Exhibits A through G.

## **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**

On January 29, 2013, the Individual submitted a QNSP to the LSO, in which he admitted that he had used a neighbor's internet connection without permission on several occasions in 2010 and 2011, and had downloaded copyrighted software and media to his computer without permission from the copyright holders from 2000 through 2006. Exhibit 7 at 18-19.

On February 14, 2013, the Individual was interviewed by an OPM investigator. The Individual again admitted using neighbors' internet connections without permission on several occasions in 2010 and 2011, and downloading copyrighted software and media to his computer without

permission from the copyright holders from 2000 through 2006. Exhibit 9 at 61-62. The Individual also stated that he had continued to use the copyrighted software and media until December 2012, when he decided to delete this material from his computer. Exhibit 9 at 61.

During his interview with the OPM investigator, the Individual volunteered that he had “struggled with an addiction to pornography since he was 11 years old.” Exhibit 9 at 62. He stated that “His wife knows about his struggles before their marriage and they made an agreement that he wouldn’t tell her if [he] ‘messed up.’” *Id.* He stated that he had never received treatment or counseling. *Id.*

On May 9, 2013, the LSO conducted a Personnel Security Interview (PSI) of the Individual. During this PSI, the Individual discussed his pornography use at length. He repeatedly stated that he had an addiction to pornography. Exhibit 8 at 8, 62, 65, 72, 93, 106. The Individual stated that he found it difficult to stop using pornography. Exhibit 8 at 11, 41. He stated “I couldn’t just stop it cold turkey.” Exhibit 8 at 41. He indicated that he repeatedly tried to stop viewing pornography and would succeed (sometimes for months at a time) before he would return to viewing it again. Exhibit 8 at 41, 44, 53, 59, 85. He stated: “Every time that I’ve stopped, I’ve always thought I wasn’t gonna do it again, um, I think it’s more wishful thinking.” Exhibit 8 at 85. He described his pornography use as “something he wanted to fight and that [he] wanted to overcome.” Exhibit 8 at 48. He stated that at the age of 19, he became more involved in his faith and “started to combat the issue by not watching it.” Exhibit 8 at 40. The Individual spoke of his pornography use as an “engrained” habit which required him to “get that release” from “the gratification.” Exhibit 8 at 62. He further stated: “I would call it an, an animal type of habit, where it’s a habit that I developed and it’s just one of those habits that’s hard to break.” Exhibit 8 at 63. The Individual stated that his pornography use is “almost always followed up with disgust.” Exhibit 8 at 72. He stated that he was concerned about his pornography use. Exhibit 8 at 85. When the Individual was asked if he had received any professional counseling, he provided conflicting information. He first stated that he had “professional counseling” but assumed that the counselors would not be able to help him. Exhibit 8 at 89-92. He later stated he had never sought professional counseling but had sought counseling from pastors. Exhibit 8 at 91.

He stated that he confided his problems with pornography to a past girlfriend and believed that his pornography use may have contributed to their break-up. Exhibit 8 at 48. He stated that he stopped viewing pornography for about a year after his marriage. Exhibit 8 at 56. When he was asked if his wife was aware of his pornography use, he stated: “Yes and no. . . . She and I have an understanding through the conversations that we’ve had that it’s something that she knows that I’m capable, she knows my past and knows that I have looked at it. . . . She knows that I’m still capable of looking at it, . . . but it’s not something that I’m going to keep her in on the loop about, if that makes sense.” Exhibit 8 at 57. The interviewer asked him: “why are you not keeping her informed?” He responded by stating: “primarily because it’s destructive, um, in nature if she knew about it.” Exhibit 8 at 57. The Individual stated that his wife does not know of his recent pornography use. Exhibit 8 at 98, 106. He felt it could cause problems in their relationship if his wife became aware of his pornography use. Exhibit 8 at 98- 100, 105-106. His wife understands that he has struggled with pornography. Exhibit 8 at 102-103.

He claimed that he last used pornography a month and a half before the PSI. Exhibit 8 at 78. He claimed his future intention was to abstain from viewing pornography, but that he did not believe he could guarantee he would not view pornography in the future. Exhibit 8 at 95-96.

On June 21, 2013, the DOE Psychologist conducted a psychological evaluation of the Individual. On June 23, 2013, the DOE Psychologist issued a report in which he opined that the Individual met the criteria for OSPD set forth in the Diagnostic and Statistical Manual- Fifth Edition (DSM-V). Exhibit 6 at 7. The DOE Psychologist opined that the Individual's OSPD is significant for two reasons: "First, as an addiction, it constitutes behaviors that, as he views them and therefore is the case, have control over him. The second reason is that the situation of his obscuring and misleading his wife is likely a time bomb." Exhibit 6 at 8. The DOE Psychologist therefore opined that OSPD is an illness or mental condition which causes, or could cause, a significant defect in the Individual's judgment and reliability. Exhibit 6 at 8.

#### **IV. DEROGATORY INFORMATION AND SECURITY CONCERNS**

The record shows that a DOE psychologist has diagnosed the Individual with Other Specified Paraphilic Disorder. 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. 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 I at ¶ 28.

"Sexual behavior that . . . 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. Specifically, "a pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop" can raise a disqualifying security concern. *Id.* at ¶ 13(b). Similarly, sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress, can also raise a disqualifying security concern. *Id.* at ¶ 13(c).

With regard to the illegal downloading of copyrighted materials, I find that such 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. Adjudicative Guideline J at ¶ 30. Also, noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information. Adjudicative Guideline M at ¶ 39.

## 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-12-0100* (2012), and cases cited therein.<sup>1</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 personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h).

### Criterion L

The Individual has a history of using neighbors’ wi-fi internet connections without permission on several occasions in 2010 and 2011, and downloading copyrighted software and media to his computer (without permission from the copyright holders) from 2000 through 2006. By doing so, he violated various statutes rules and regulations, and exhibited poor judgment and lack of trustworthiness.

However, there are three factors which mitigate the security concerns raised by the Individual’s unauthorized use of wi-fi internet connections and copyrighted software and media. First, and most importantly, the Individual’s transgressions were relatively minor in nature, as admitted by the DOE Personnel Security Specialist in her testimony at the hearing. Tr. at 65-66. Moreover, a sufficient period of time has passed to resolve the relatively minor security concerns raised by the Individual’s unauthorized use of wi-fi internet connections and copyrighted software and media. The Individual last downloaded copyrighted software or media in 2006, and discontinued his unauthorized wi-fi access in 2012. Finally, I note the Individual’s unauthorized use of wi-fi internet connections and copyrighted software and media came to DOE’s attention through his candid disclosure during his background investigation.

After careful consideration of these mitigating factors, I find that the Individual has resolved the security concerns raised under Criterion L.

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<sup>1</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

**Criterion H**

I find that the Individual has not mitigated the security concerns raised under Criterion H by his OSPD diagnosis. At the hearing, the Individual challenged the DOE Psychologist's opinion that that Individual suffers from OSPD. However, the Individual did not present any expert testimony in support of his assertion that he does not suffer from OSPD.

The Individual testified that, since his marriage, his use of pornography has been sporadic, and that he has not viewed pornography during the past "eight or nine" months. Tr. at 78, 103-104. He now claims that he is not addicted to pornography. Tr. at 78. To this end, he stated:

After having done some research -- surprisingly, I was kind of hoping that [the DOE Psychologist] would define for me whether or not I was addicted, but after doing my own research because of all of this, I think it would have been best for me to retract the statements regarding whether or not I had an addiction or a habit, primarily because of how infrequent my usage of pornography was and how -- how intense it wasn't. So I definitely wouldn't diagnose myself with having an addiction and, psychologically speaking, it doesn't seem as if there is much ground for that.

Tr. at 78-79.

The Individual admitted feeling guilty about viewing pornography. Tr. at 91-92. He provided the following description of his wife's understanding of his pornography issues:

She's been aware of this my entire marriage, even before we were married, and she's aware that it's also a pretty big struggle for a lot of Christian men, which is not unfamiliar to her. So what we both decided was that it would be inappropriate for her to be involved in learning the details of my struggle. So, in other words, basically, she was aware that I had an issue of looking at pornography before, but that she wouldn't be involved in -- or, excuse me, she's known that I had a pornography issue before and she knows that I have the potential to view pornography again at any particular point in time, but she and I both agree that it's something that would be inappropriate to share in a detailed fashion together.

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She knows that I've been diagnosed by Dr. Smith to have an other specified paraphilic disorder. She knows that it's been suggested that I have an addiction to pornography. She knows that I have looked at pornography within our marriage.

Tr. at 99-102.

The Individual's wife testified on his behalf at the hearing. She testified that was aware that her husband has viewed pornography. Tr. at 112. She testified that she knew that it was common for men to view pornography, and that the Individual was "striving not to do that anymore." Tr.

at 112. She testified that the Individual's past pornography use does not bother her, and that she does not "see it as an issue." Tr. at 113, 114. She would not have a problem if the Individual were to continue to use pornography. Tr. at 122. She further testified that she was aware that the DOE Psychologist found that the Individual was addicted to pornography. Tr. at 113. The Individual's wife testified that her husband had never expressed the belief that he was addicted to pornography to her, but he had informed her that he told the DOE Psychologist that he was addicted to pornography. Tr. at 123-124. She testified that she has chosen not to know the specific details of the Individual's pornography use. Tr. at 119-120, 124.

The DOE Psychologist was present for the testimony of each of the other witnesses at the hearing. He testified after the other witnesses had completed their testimony. The DOE Psychologist testified that he had administered a sexual addiction screening questionnaire to the Individual. Tr. at 127. The Individual's answers to the test suggested that the Individual has a high likelihood of sexual addiction. Tr. at 127. He noted that the Individual reported to him that the Individual gets critical, resentful and moody (which the DOE Psychologist notes are all symptoms of depression) if he does not have sex regularly. Tr. at 128-129. He noted that the Individual presents himself as a highly principled person, yet violates these principles in order to obtain sexual gratification. Tr. at 131, 141. The DOE Psychologist opined that the Individual, by repeatedly using pornography in violation of his principles, is picking and choosing which laws or rules he will obey as it suits him. Tr. at 131-133, 141. The DOE Psychologist testified that the Individual has demonstrated his compulsion to, and inability to desist from, using pornography. Tr. at 133-135. He noted that the Individual has previously described his pornography use as an addiction and described his inability to stop using it. Tr. 134-136. The DOE Psychologist opined that the Individual may have stopped using pornography for the time being, but is unlikely to avoid relapsing. Tr. at 137. The DOE Psychologist noted that the Individual needs formal treatment for his addiction, but is not receiving it. Tr. at 137-138. The DOE Psychologist testified that the Individual obscures the true extent of his addiction from his wife, and that his marriage would be threatened if his wife were to become fully aware of the extent of his pornography addiction. Tr. at 140, 144. The DOE Psychologist further testified that the Individual is therefore subject to manipulation as a result of this concealment. Tr. at 140. The DOE Psychologist therefore found that the Individual's judgment and reliability have been significantly affected by his OSPD. The DOE Psychologist was also concerned about the Individual's willingness to break his own moral rules when he wanted something. Tr. at 141-142. The DOE Psychologist noted that the Individual was experiencing clinically significant distress because he was worried and upset by his pornography use and that anxiety and distress caused him to conceal his activities from his spouse, which met Criterion B of the DSM-V's description of OSPD. Tr. at 156. The Individual also experienced clinically significant distress when he repeatedly failed to discontinue using pornography. Tr. at 160-161, 175.

The Individual has attempted to challenge the DOE Psychologist's finding that he suffers from OSPD. Essentially, the Individual is contending that I substitute his judgment for that of an experienced clinical psychologist on a matter which requires the expertise of a credentialed mental health professional to resolve. I decline to do so. Moreover, it is clear that the Individual has, for many years, experienced an intense and extreme compulsion to view pornography. He has repeatedly tried to avoid pornography use, which he considers immoral, disgusting and an "animal habit." Yet he has always eventually returned to pornography use which has left him

feeling remorse and guilt. The Individual's compulsion to use pornography has caused him to exhibit behaviors which show that his unresolved compulsion or addiction has negatively affected his judgment, reliability and trustworthiness by causing him to act contrary to his own moral code, and to conceal the full extent of his behavior from his wife. Moreover, the Individual was being quite frank and honest about his addiction and the difficulties it had caused him prior to the hearing, but at the hearing, attempted to reverse course and claim that he was not addicted to pornography, and that his use of pornography was not intensive or frequent. This change of heart, and apparent deviation from his previous candor, provides a further example of his OSPD affecting his judgment, reliability, and trustworthiness.

Moreover, I find the DOE Psychologist's compelling testimony that the Individual will likely relapse without proper treatment to be persuasive. 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 resolved the security concerns raised under Criterion L, but has not resolved the security concerns raised under Criterion H. Therefore, the Individual has not demonstrated that granting 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 granted. 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, Esq.  
Hearing Officer  
Office of Hearings and Appeals

Date: December 23, 2013