

*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: July 24, 2014)

Case No.: PSH-14-0072

)

)

Issued: December 19, 2014

Decision and Order

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") for access authorization 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."¹ For the reasons set forth below, I conclude that the individual should not be granted access authorization at this time.²

I. BACKGROUND

The following facts are undisputed. The individual's employer, a Department of Energy (DOE) contractor, requested a security clearance on the individual's behalf. In response to that request, the local security office (LSO) conducted an investigation of the individual. During the course of that investigation, the LSO obtained information about the individual that raised security

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² 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>.

concerns. In order to resolve these concerns, the LSO summoned the individual for an interview (PSI) with a personnel security specialist in January 2014.

The PSI failed to resolve security concerns about the individual's personal conduct and about his mental and emotional health. Regarding his personal conduct, the individual admitted that:

- during his years in college in the early 2000s, he intentionally cheated on tests in order to obtain a higher grade point average and a better job;
- from 1997 to 2011, he illegally downloaded music and video games on over 100 occasions and, from 2006 to 2012, he received from his brother and his cousin music and software that he believed was illegally downloaded;
- while working for a federal contractor in 2009, he deliberately used a personal thumb drive to download sensitive company information, and to take that information home, both of which he knew were against his employer's policies. At an unrecalled time he misplaced a thumb drive containing his employer's protected information which allowed access to his employer's network. Although the information was not classified, he indicated that his actions may have caused damage to his employer and to the United States;
- he used logon and password information that was not his, and that he obtained from a third party, for a website. This allowed him to use and access paywall-protected services from November 2011 to December 2012 without authorization and without paying for the services;
- in December 2012, he attempted to access his in-laws' cable TV account without their permission, in order to obtain free services; and
- during his January 2013 interview with an OPM investigator, he intentionally did not disclose all relevant facts regarding his 2009 violations of his employer's policies concerning the handling of sensitive information, and he did not disclose these violations to his employer.

During the PSI, the individual also discussed counseling that he had received while in college for "stress, guilt, and . . . obsessive-compulsive tendencies." DOE Exhibit (Ex.) 9 at 111. He reported "obsessing" over the amount of toothpaste that remained in his mouth after brushing his teeth, *id.* at 119-120, checking and re-checking doors and his computer at work to make sure that they were locked, *id.* at 141-144, and not being able to discard empty bags of potato chips for fear that they may contain bits of sensitive information. *Id.* at 145.

After the PSI, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist") for an agency-sponsored evaluation. The DOE psychologist prepared a written report based on that evaluation, and submitted it to the LSO. In that report, the DOE psychologist noted other symptoms exhibited by the individual, including his unreasonably thinking that someone outside the building at his place of work could see in through the window and ascertain the password for his computer, and his fear that, when he washes and then dries his hands at work, sensitive information might be transferred to the towel. DOE Ex. 6 at 3-4. The DOE psychologist diagnosed the individual as suffering from Obsessive-Compulsive Personality Disorder (OCPD), and opined that this is a mental illness that was causing or could cause a significant defect in the individual's judgment or reliability. *Id.* at 5.

After reviewing this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced seven exhibits and presented the testimony of three witnesses, in addition to testifying himself.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As previously stated, the LSO concluded that the derogatory information outlined above, and other information in the individual's personnel security file, created a substantial doubt as to the individual's eligibility for a security clearance. Specifically, the LSO concluded in the Notification Letter that this derogatory information pertained to paragraphs (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a licensed clinical psychologist causes, or may cause, a significant defect in his judgment or reliability. 10 C.F.R. § 710.8(h). As support for this criterion, the Notification Letter cites the findings of the DOE psychologist.

Criterion (l) refers to information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct includes, but is not limited to, criminal activity. As support for its invocation of this criterion, the Letter cites the individual's admissions during the PSI about his personal conduct that are outlined above.

These circumstances adequately justify the DOE's invocation of criteria (h) and (l), and raise significant security concerns. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Also, credible, adverse information that may not be sufficient by itself for an adverse determination can still raise a security concern, and may be disqualifying, if, when combined with all available information, it supports a whole-person assessment of questionable judgment, dishonesty, lack of candor, unwillingness to comply with rules or regulations, or other characteristics indicating that the person may not properly safeguard classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E and I.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

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, the burden is on the individual to 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 Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

A. Criterion (h)

At the hearing, the individual testified that he did not agree with the DOE psychologist’s diagnosis of OCPD. Instead, he believes that he suffers from Obsessive-Compulsive Disorder (OCD). Hearing Transcript (Tr.) at 63. He described the difference between the two Disorders as being that a personality disorder means that the subject has character or personality flaws that prohibit him or her from having normal relationships with others and from living a normal life, whereas OCD is less severe and does not have these characteristics. Tr. at 112-113. The individual added that he gained this understanding from a psychologist from whom he has been receiving treatment for approximately the last three months. Tr. at 63. He further testified that he has seen an improvement in his condition as a result of this treatment. He no longer takes as long to make sure that his doors and his computer are locked, he no longer hoards empty potato chip bags for fear that they contain sensitive information, and his wife and a friend have also observed progress in his behavior. Tr. at 64-65, 118-119.

He then commented on the treatment that he has been receiving. His psychologist has prescribed Alprazolam, an anti-anxiety drug. She has also employed a therapeutic technique whereby she and the individual have given a name to that part of the individual that engages in the obsessive

behaviors, and the individual has had conversations with the obsessive part of himself about those behaviors. Tr. at 125-126. The individual testified that this treatment has helped to ease his symptoms, and that he intends to remain in treatment. Tr. at 70. The individual's supervisor and co-worker both testified that they have not observed any peculiar behavior on the individual's part at work, nor have they witnessed any behavior that would cause them to question the individual's judgment or reliability. Tr. at 13-14, 28-29.

The individual's psychologist did not testify at the hearing, but instead submitted a written report. Individual's Exhibit (Ind. Ex.) G. In that report, she concluded that the individual does not suffer from any personality disorders, but that he does

have several clinical syndromes none of which lie in the categories of the severe personalities or in the severe clinical syndromes. The clinical syndromes found in [the individual's] personality are: depressive, dependent, masochistic, anxiety and dysthymic. . . . That being said, I hasten to remind the reader that these are clinical syndromes and not true pathology. These issues can be addressed and remedied with behavioral therapy, rational-emotive techniques and medication.

Id. at 2. She went on to opine that "his compulsions and other forms of anxious behavior are an elaborated defense against all thoughts, words and deeds of a sexual nature," and that "in time we will rid [the individual] of his self-imposed limitations." *Id.*

After observing all of the testimony, the DOE psychologist altered her diagnosis from OCPD to OCD. She testified that she initially diagnosed the individual as suffering from OCPD because he met seven of the eight criteria for that diagnosis set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V)*. However, she added that one feature of a personality disorder is that it adversely affects the sufferer's interpersonal relationships, and that based on the testimony at the hearing, she concluded that the individual's symptoms have "been more problematic for him internally than interpersonally." Tr. at 134. The DOE psychologist went on to testify that OCD is also an illness or mental condition that causes or may cause a significant defect in judgment or reliability, because it can adversely affect the accuracy of the individual's perception. Tr. at 143.

The DOE psychologist then commented on the report submitted by the individual's psychologist. As an initial matter, she noted the absence from the report of a *DSM-V* diagnosis, and she testified that it would have been "helpful to know what the diagnosis was." Tr. at 140. She further observed that the report did not provide much information about the individual's treatment plan. Alprazolam, which is helpful for anxiety, is usually given on a shorter-term basis, she said, and the most commonly given medication for OCD would be one of the serotonin reuptake inhibitors (SRIs). This is normally coupled with a treatment technique called exposure and ritual prevention, which involves getting the patient "habituated to the anxiety-provoking triggers and letting them re-experience that without the anxiety." Tr. at 141. The DOE psychologist also observed that OCD treatment usually occurs on a weekly basis, whereas the individual testified that he sees his psychologist approximately every two weeks. Tr. at 64, 141. The DOE psychologist concluded that the individual's prognosis would be good with ongoing appropriate treatment. Tr. at 145. However, based on the individual's psychologist's report and

the other information before her, the DOE psychologist was unable to determine whether the individual's treatment met that description.

After reviewing this testimony and the record as a whole, I find that the individual has not adequately addressed the DOE's security concerns regarding his mental and emotional health. As an initial matter, he had only been in therapy for three months as of the date of the hearing, and by his own admission, his recovery has been "a slow process." Tr. at 115. Although he testified that his symptoms are not as severe as they once were, he is still experiencing some of the effects of his disorder. He sometimes still repeatedly checks locks at home and at work, excessively rinses out his mouth after brushing his teeth, and has concerns about someone outside of his building ascertaining his password that most people might consider to be unreasonable. Tr. at 114-123. It is evident that the individual's OCD is still affecting the accuracy of his perceptions.

Furthermore, like the DOE psychologist, I am unable to conclude that the individual is receiving adequate treatment for his OCD. Assuming that the individual's psychologist did, in fact, diagnose the individual as suffering from OCD, the DOE psychologist's testimony indicates that the individual is not receiving the standard treatment for this disorder, and the individual's psychologist was unavailable to answer questions about her diagnosis or about the reasons for, and the efficacy of, the individual's treatment plan. The individual has reported an improvement in his symptoms, but given my uncertainty about the nature and long-term efficacy of his treatment, I am unable to conclude that the individual has adequately addressed the DOE's concerns under criterion (h) and *Adjudicative Guideline I*.

B. Criterion (l)

During his testimony, the individual also addressed the DOE's concerns under criterion (l) regarding his personal conduct. Regarding his cheating on tests in college during the early 2000s, he testified that shortly after taking a leave of absence from the school, he wrote some of his professors and confessed his improper actions. Tr. at 79. He said that his in-laws have let him use other similar accounts of theirs, so he did not believe that they would object to his using their cable company account to obtain free services. Tr. at 84. Concerning his inappropriate use of a thumb drive, the individual testified that he was not aware at the time of his employer's policy in this area. He added that he is very much aware of his current employer's prohibition against using unauthorized media to store or transport sensitive information, and that he has not violated this rule. Tr. at 70-73. With regard to all of the actions cited by the DOE under criterion (l), the individual testified that he no longer engages in such behavior, that he sincerely regrets his actions, and that he will not engage in similar behavior in the future. Tr. at 73-88. The individual's supervisor, co-worker and friend all testified that the individual is an honest and reliable person who can safely be entrusted with access authorization.

Some of the individual's improper behavior was relatively minor, and might not, if considered in isolation, be sufficient to raise significant concerns about his judgment and reliability. However, when taken as a whole, his actions support a whole-person assessment of questionable judgment and dishonesty. *Adjudicative Guidelines*, ¶ 16(d). From 1997 to 2013, the individual repeatedly obtained music, software, and online services that he was not entitled to and did not pay for, cheated on tests while in college, violated a previous employer's policies concerning the use of

information technology systems, and then, most significantly, deliberately withheld information that he knew to be relevant about that violation during his OPM interview. During the hearing, the individual testified that he later confessed his cheating on the tests, and that his extensive involvement with his church and with his religion demonstrates that he is an honest and trustworthy person. However, the mitigating value of these factors is significantly lessened by the facts that the professors to whom he allegedly confessed were not the ones who administered the tests on which he cheated, and that his religious involvement did not prevent him from engaging in the unethical behavior in the first place. Significant security concerns remain unresolved under criterion (I) and *Adjudicative Guideline E*.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criteria (h) and (I). Consequently, he has failed to convince me that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: December 19, 2014