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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: April 14, 2017) Case No.: PSH-17-0025
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Issued: June 22, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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’s access authorization should be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s mental health. In order to address those concerns, the LSO summoned the Individual for an interview with a personnel security specialist in September 2016. Following the September 2016 interview, the LSO sent the Individual for an evaluation with a DOE consultant-psychologist (DOE Psychologist).

On March 1, 2017, after reviewing the transcript of the Personnel Security Interview (PSI) and the Individual’s personnel security file, the LSO sent the Individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to continue to hold access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline I (Psychological Conditions) of the *Revised Adjudicative Guidelines for Determining*

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Eligibility for Access to Classified Information, The White House (December 29, 2005) (the Guidelines).

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the Individual presented the testimony of three witnesses and testified on his own behalf. The DOE Counsel presented the testimony of the DOE Psychologist. The LSO submitted nine exhibits (Ex. 1-9) into the record; the Individual tendered sixteen exhibits (Ex. A-P). The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

a. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

b. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual's continued eligibility for access authorization. The information in the letter specifically cites Guideline I.

Guideline I addresses "[c]ertain emotional, mental, and personality conditions [that] can impair judgment, reliability, and trustworthiness." Guideline I at ¶ 27. While seeking mental health counseling cannot be used as the sole basis for raising this guideline, an "opinion by a duly qualified mental health professional that the individual has a condition...that may impair judgment, reliability, or trustworthiness" could raise a security concern and may disqualify an individual from maintaining access authorization. *Id.* at ¶¶ 27, 28(b). The Notification Letter supports the use of Guideline I, citing the report of the DOE Psychologist who evaluated the Individual, concluding that the Individual met the criteria for "Persistent Depressive Disorder that causes him to be reactively angry, depressed and at times suicidal." The Notification Letter further stated that the DOE Psychologist determined that the Individual's depression and suicidal inclinations made him "likely to have significant defects in his judgment and/or reliability."

IV. Findings of Fact

Following a divorce and the death of his dog, the Individual began experiencing feelings of sadness and loneliness. Ex. B at 3. He visited his primary-care physician, who prescribed an antidepressant. Ex. B at 3 and Ex. 6 at 2. The Individual informed his supervisor of this fact. Ex. B at 3.

In September 2016, the Individual participated in a PSI. The Individual stated that, in addition to the medication, his primary-care physician suggested that he seek counseling. Ex. 8 at 12, 15. However, the Individual indicated that after a week of using the medication, he began feeling better and, therefore, chose not to seek counseling. *Id.* at 17. Following the PSI, the LSO sent the Individual for evaluation with the DOE Psychologist. The DOE Psychologist determined that the Individual suffered from Persistent Depressive Disorder "that causes him to be reactively angry, depressed, and at times suicidal." Ex. 6 at 6-7. The DOE Psychologist determined this to be "an illness or mental condition of a nature which causes or may cause a significant defect in judgment or reliability[.]" and he recommended that the Individual consult a psychiatrist for proper medication management and seek therapy. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due

deliberation, I have determined that the Individual's security clearance should be restored. I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

At the hearing, the Individual asserted that he was not contesting the diagnosis of depression. Tr. at 9-10. Instead, the Individual sought to demonstrate, through his exhibits, his testimony and his witnesses, that he had resolved all of the security concerns. *Id.* at 9. While the Individual's counseling psychologist (Counseling Psychologist) was unable to testify at the hearing, he submitted a notarized letter into the record indicating that he had been providing therapeutic counseling to the Individual. *Id.* at 7; Ex. A. The Counseling Psychologist noted that the Individual did "report a history of depression and suicidal thoughts, but they are effectively managed...with his medication." Ex. A at 1. He further noted that while he did not see a need for continued therapy as the Individual's "symptoms are quite minimal[,] he would support the Individual's desire to continue therapy. *Id.*

In testifying on his own behalf, the Individual stated that he had held a security clearance for approximately fifteen years without raising a security concern. Tr. at 85-86. He explained that he "felt overwhelmed" by the divorce and the death of his dog and was having thoughts and feelings that he did not know how to express; so he sought "help" from his primary care physician, who prescribed medication. *Id.* at 86-87. After seven days, the Individual explained that he "felt a lot better." *Id.* at 87. The Individual acknowledged that he would not have sought counseling had it not been for the DOE Psychologist's evaluation. *Id.* at 93. He explained that through counseling, he has learned that his emotions are normal and "[w]hat's important is how [he] deal[s] with them." *Id.* He further elaborated that the stress of these administrative proceedings has shed light on his support system, and he now realizes that he has "a lot of people [he] can talk to if [he] need[s] it." *Id.* at 93-94; 96. The Individual explained that he has been seeking counseling and wishes to continue to pursue counseling. *Id.* at 94-95; 104. He explained that the Counseling Psychologist has given him the tools to deal with the present, and not focus on the past, and he stated that he felt relief in knowing "that everybody feels concern [and] stress." *Id.* at 94-95. He further stated that he intends to use his medication as prescribed and is open to suggestions of his medical providers regarding changes to the dosage. *Id.* at 95-96.

The Individual additionally called three witnesses to testify on his behalf: his direct supervisor and representative at the hearing (Supervisor), his sister-in-law, and a coworker.³ *Id.* at 13, 46, 69. Each witness stated that they had observed the Individual in stressful situations and had never seen him react negatively. *Id.* at 24, 36-37, 49-50, 72-73. The Supervisor stated that in approximately five-and-a-half years of knowing the Individual, he had never seen the Individual demonstrably angry, nor had he observed the Individual behave in a concerning manner. *Id.* at 15-16, 28, 37. While the Supervisor acknowledged that the loss of the Individual's dog was a very traumatic event in his life, the Supervisor noted that the Individual was excited about his counseling sessions and "enthusiastic about continuing to meet" with the Counseling Psychologist. *Id.* at 25, 31-32.

³ The Individual submitted into the record eight "Letters of Support" from persons who know him. Ex. F, H, I, K, L, N-P.

The Individual's coworker testified that he knew the Individual both on a professional and personal level as they spent time together outside of the workplace. *Id.* at 70-71. The coworker explained that he knew the Individual when the Individual worked with the "worst project manager [he had] ever seen in [his] life." *Id.* at 72. He explained that while the Individual received the "brunt" of the manager's treatment, which he described as "throwing stuff and yelling," he never saw the Individual react negatively. *Id.* at 73. Like the Supervisor, the coworker acknowledged that the Individual "expressed hurt" over the loss of his dog, but the coworker saw "nothing out of the ordinary." *Id.* at 81, 83.

The Individual's sister-in-law testified that she has known the Individual since 1982 and has observed him "under a lot of stress." *Id.* at 49. She described him as very reserved and nonreactive, and stated that, while she had seen him agitated and frustrated, she had never seen him act out, aggressive, or confrontational. *Id.* at 49-51. She shed light on the Individual's relationship with his dog, explaining that the dog was a part of the family, and the loss of the dog felt like a family member had died. *Id.* at 51-52. She explained that the Individual has adopted another dog and stated that "he has a partner again." *Id.* at 66-67. She further expressed that she and her husband are willing to be whatever support system the Individual might need. *Id.* at 62.

The final witness was the DOE Psychologist, who sat through the entire hearing, listening to the testimony of all of the witnesses. The DOE Psychologist explained that in hearing the testimony, he was unaware of the stress the Individual had experienced under his previous manager and he noted that the testimony revealed that the Individual was "generally regarded as someone who was easy to get along with." *Id.* at 123, 126. He explained that he diagnosed the Individual with a Persistent Depressive Disorder, and noted that this diagnosis was not likely to impair a person's judgment unless that person was suicidal. *Id.* at 124. The DOE Psychologist stated that the Individual had described having suicidal thoughts about one year prior to the evaluation, and he thought the Individual had a condition that could lead to bad judgment. *Id.* at 124, 127. However, after listening to the testimony at the hearing, the DOE Psychologist stated that he was revising his opinion, and he had no reservations about the Individual's psychological well-being. *Id.* at 128. He stated that there was no defect in the Individual's judgment or reliability. *Id.*

Considering these facts, I conclude that the security concerns raised under Guideline I have been sufficiently mitigated. After the loss of his dog, the Individual voluntarily sought out help, and then, after being evaluated by the DOE Psychologist, he voluntarily sought additional treatment in the form of therapeutic counseling. *See* Guideline I at ¶ 29(b). The Individual is currently receiving counseling from the Counseling Psychologist, and stated that he intends to continue this course of action, in spite of the Counseling Psychologist indicating it was no longer necessary. *Id.* Furthermore, the DOE Psychologist indicated that he no longer had concerns about the Individual's psychological state. *See id.* at ¶ 29(c)(e). I further find that the DOE Psychologist's revised opinion is consistent with the witness testimony and my observations of the Individual.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline I. However, after

considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns associated with that guideline. I therefore find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should restore the Individual's access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: June 22, 2017