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In the Matter of: Personnel Security Hearing)
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Filing Date: May 2, 2017) Case No.: PSH-17-0029
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Issued: July 19, 2017

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXXXXXX (“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 not be granted at this time.

I. Background

The Individual is employed by a DOE contractor in a position that requires her 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 a Personnel Security Interview (PSI) in November 2016. Following the November 2016 PSI, the LSO sent the Individual for an evaluation with a DOE consultant-psychologist (DOE Psychologist).

On April 5, 2017, the LSO sent the Individual a letter (Notification Letter) advising her that the DOE possessed reliable information that created substantial doubt regarding her eligibility 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 Eligibility for Access to Classified Information*, The White House (December 29, 2005) (the Guidelines).

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.

Upon her receipt of the Notification Letter, the Individual exercised her 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 one witness, her husband, and testified on her own behalf. The DOE Counsel presented the testimony of the DOE Psychologist. The LSO submitted five exhibits (Ex. 1-5) into the record; the Individual tendered one exhibit (Ex. A). 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

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.

or continuation of a person's 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 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 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 "Post-Traumatic Stress Disorder; Persistent Depressive Disorder, early onset with intermittent depressive episodes; and Delusional Disorder, Persecutory type." The Notification Letter further stated that the DOE Psychologist determined that the Individual's potential for suicide contributes to an emotional instability that can "impair judgment and reliability."

IV. Findings of Fact

The Individual has a long history of mental health concerns. Ex. 4 at 3-5. At an early age, the Individual's mother abandoned her and she lived in a home with an accusatory stepmother. *Id.* at 4. The Individual acknowledged feeling depressed during this period. *Id.* In 1997, she immigrated to the United States and joined the United States Navy. *Id.* Later, while serving overseas, a fellow sailor sexually assaulted her. *Id.* The Individual eventually received a medical discharge from the Navy based on medical conditions that manifested after her sexual assault. *Id.*

In 2005, a U.S. Department of Veterans Affairs (VA) physician diagnosed the Individual with Major Depressive Disorder. *Id.* In 2007, after she finally told a doctor about her sexual assault, she was diagnosed with Post Traumatic Stress Syndrome (PTSD). *Id.* During this period, she first began taking medications for her depression. *Id.* In 2014, the Individual moved to another state to begin her current position. *Id.* Although the VA initially assigned her a new VA psychiatrist, this physician soon left the VA system. *Id.* She was then placed on the waiting list, but never received a new VA psychiatrist. *Id.*

In 2015, the Individual discussed with a coworker the fact that she was feeling under stress at work and that, during a recent physical, she told her physician that she had thoughts of suicide.

Id at 2. Later that day, after the Individual's supervisor indicated that she was going to talk to the Individual about her performance, her coworker told the supervisor that it would not be a good time because the Individual was having thoughts of suicide. *Id*. When the supervisor approached the Individual about the conversation, the Individual became upset and was escorted to the Employee Assistance Program office, where the staff recommended that she be taken to an inpatient center for a medical evaluation. *Id*. The Individual returned to work after three days, but continued to feel stressed due to both work and her home life. *Id*.

In early 2016, the VA approved the Individual to see a non-government psychiatrist for eight sessions. *Id* at 5. The Individual's psychiatrist recommended that the Individual take a leave of absence from work in order to get her stress under control. *Id* at 3. During the time the Individual was off work, the DOE terminated her security clearance due to her not utilizing the clearance and being absent 90 days. *Id*. When she reapplied for her security clearance, it was denied. *Id*.

Following her November 2016 PSI, the LSO sent the Individual for evaluation with the DOE Psychologist, who diagnosed the Individual with Post-Traumatic Stress Disorder; Persistent Depressive Disorder, early onset with intermittent depressive episodes; and Delusional Disorder, Persecutory type. *Id* at 8. The DOE Psychologist recommended that the Individual be treated by someone who "grasps the seriousness of her misery and her suicide potential, rather than only treating her symptoms or PTSD." *Id*. He opined that such treatment would likely take a minimum of six to nine months. *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 not be granted. I cannot find that granting 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.

During the hearing, the Individual testified that despite her PTSD and her depression, she has always been a hard worker and that she wishes to continue to contribute to help her adopted country. Tr. at 41. The Individual testified that she believes her work environment exacerbated her condition. Tr. at 24. When she returned to work from her leave of absence, she no longer held a security clearance and was placed in a cubicle near the kitchenette, which impacted her ability to concentrate. Tr. at 24-25. She sought an accommodation, but never received one. Tr. at 25-27. During her first year in this position, the Individual testified that she had five managers and found it difficult to adapt to the differing expectations. Tr. at 27. She also testified that her straightforward personality did not fit into the restrained environment of her office. Tr. 30.

The Individual testified that she would like to return to work and believes she is better equipped to deal with any obstacles she may face. Tr. at 35. She stated that she has her husband and therapist as sounding boards to determine whether her feelings and responses to certain situations are appropriate. *Id.* She believes that she is more mindful of what she is going through. Tr. at 37. Additionally, outside of work, she has other activities like cooking and gardening, which allow her to relax. *Id.*

The Individual testified that in therapy she has worked on being aware of what triggers her. Tr. at 38. With her therapist, she does exercises to help her determine the appropriate reaction to certain situations. *Id.* She testified that her therapist has also recommended a PTSD group for the Individual to attend, but she has not yet started those sessions. *Id.* The Individual testified that her therapist believes she has showed marked improvement, but is still about at the midpoint of her treatment. The Individual also testified that she is on medication to manage her depression. Tr. at 39. The Individual stated that if she felt down again, she would reach out to the people necessary to help her like her doctor or a crisis line. *Id.* The Individual's therapist did not testify during the hearing, but the Individual did offer a letter into the record from the therapist describing the Individual's current treatment. *See Ex. A.*

The Individual's husband also testified during the hearing. Tr. at 10. He stated that the Individual accepts her medical condition, and is taking the appropriate steps to deal with it. Tr. at 13-14. The Individual's husband stated that he has been taking online classes through the VA so that he is able to work with his wife and help her with her condition as well. Tr. at 14. He stated that he first saw a change in his wife's mental stability when they moved to their current location. Tr. at 15. When they first moved, they lived on a military base, but he testified that the Individual felt caged while living on the base due to the rules, so they eventually moved. Tr. at 17. He believes that part of her more upbeat attitude is due to her being in a more positive environment. Tr. at 18.

The DOE Psychologist testified after listening to the testimony of the other witnesses. Tr. at 61. The DOE Psychologist acknowledged that there is a cultural dimension to the Individual's situation. Tr. at 62. He stated that her need to be very clear and forthright comes from the chaotic way in which she was raised and may also be part of her home country's culture. *Id.* Due to this, the DOE Psychologist testified that the Individual needed to have a lot of stability and structure, and that even small changes can be disruptive for her. Tr. at 63. He stated that he believed that her marriage, which caused her some stress, has greatly improved. Tr. at 67. However, the DOE Psychologist testified that the Individual needs more than support and does not believe she is receiving the appropriate type of therapy. Tr. at 67-68. He recommended one-to-one dynamic therapy that would meet ideally twice a week. Tr. at 69-70. This therapy would take into consideration more than symptom patterns. *Id.* He testified that although she has made significant progress, the Individual is not far enough along in her treatment to where he could say that there is not a concern with her judgment and reliability. Tr. at 77.

Considering these facts, I conclude that the security concerns under Guideline I have not been sufficiently mitigated. The Individual has a long history of mental health conditions that persist

today. *See* Guideline I at ¶ 29(d), (e). Since the Individual became a part of the VA system, she has actively sought help or treatment with her mental condition, although that help has not always been available to her due to a lack of resources. *Id.* at ¶ 29(b). Although there was a lapse in her treatment when she moved for her current position, the Individual is currently receiving counseling from a mental health professional. *Id.* However, the DOE Psychologist testified that although the Individual has demonstrated compliance with her current treatment plan, he does not believe that she is receiving the appropriate treatment for her condition. He further testified that, despite the fact that the Individual has made significant progress, she is not yet far along enough in her treatment for her condition to be considered under control. I further conclude that the DOE Psychologist's opinion is consistent with the witness testimony and my observations in this case.

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. 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 not brought forth sufficient evidence to resolve the security concerns associated with that guideline. I therefore cannot find that granting 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 not grant the Individual's access authorization at this time. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

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

Date: July 19, 2017