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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: May 16, 2018)	Case No.:	PSH-18-0042
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_____)		

Issued: August 14, 2018

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be granted.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to the U.S. Office of Personnel Management (OPM) on November 11, 2015. DOE Ex. 11 at 52. OPM's Federal Investigative Services conducted a background investigation on the Individual which revealed that the Individual filed for bankruptcy subsequent to completing the e-QIP, had a history of failing to meet his financial obligations, and suffered from memory lapses and muscle tics as a result of Post-Traumatic Stress Disorder (PTSD) stemming from his service in the U.S. Army. DOE Ex. 6. As part of its evaluation of the Individual for a security clearance, the local security office (LSO) conducted a Personnel Security Interview (2017 PSI) of the Individual on August 2, 2017. DOE Ex. 10 at 1.

Based upon information provided by the Individual in the 2017 PSI, the analyst who interviewed the Individual recommended that the Individual undergo a psychological evaluation. DOE Ex. 5

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

at 1. A DOE psychologist conducted an evaluation of the Individual on October 19, 2017 (Psychological Evaluation). DOE Ex. 7 at 1. Based on discrepancies between the information provided by the Individual on his e-QIP, in the 2017 PSI, and during the Psychological Evaluation, the LSO conducted a second PSI (2018 PSI) on January 3, 2018. *See* DOE Ex. 4 at 1; *see also* DOE Ex. 9 at 1.

As the 2017 PSI, Psychological Evaluation, and 2018 PSI raised unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated March 23, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under "Guideline I, Psychological Conditions." DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO introduced eleven (11) numbered exhibits (DOE Ex. 1–11) into the record and presented the testimony of the DOE psychologist. The Individual introduced thirteen (13) lettered exhibits (Individual Ex. A–M) into the record and presented the testimony of seven (7) witnesses, including himself. I received a transcript of the proceedings (Tr.) on August 9, 2018.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline I (Psychological Conditions) as the basis for denying the Individual a security clearance. DOE Ex. 1.

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. The Notification Letter asserted that: the DOE psychologist determined that the Individual's willingness to present highly inconsistent versions of his psychological, emotional, and physical function depending upon the circumstances constituted a personality condition which could impair his judgment, stability, reliability, and trustworthiness; the DOE psychologist determined that the Individual's judgment was impaired; and, the DOE psychologist concluded that the Individual's behaviors form a constellation of a personality condition which impairs his judgment, stability, reliability, and trustworthiness. DOE Ex. 1. The Individual's inconsistent accounts of his psychological, emotional, and physical function, as well as the DOE psychologist's determination that the Individual has a personality condition which impairs his judgment, reliability, and trustworthiness, justify the LSO's invocation of Guideline I in the Notification Letter. Guideline I at ¶ 28(a)–(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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 security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). 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 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). 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.

IV. FINDINGS OF FACT AND HEARING TESTIMONY

The Individual is a U.S. Army veteran who suffered several traumatic events during the course of his military service. *See* DOE Ex. 7 at 2–3. The Army honorably discharged the Individual in 2008. Individual Ex. B. The injuries the Individual suffered during his service left him permanently disabled, and the United States Department of Veterans Affairs (VA) gave the Individual a seventy percent (70%) service-connected disability rating (disability rating), which rating included a disability rating of thirty percent (30%) for PTSD. *See* Individual Ex. K at 4; *see also* DOE Ex. 3. The Individual possessed a Department of Defense Top Secret security clearance until 2010. Individual Ex. A at 1. After leaving the Army, the Individual started his own business. *Id.* at 3.

The Individual experienced significant personal and professional difficulties in 2014, including divorce from his wife, the death of his father, and the financial failure and closure of his business. *See* DOE Ex. 7 at 3; *see also* DOE Ex. 9 at 32; *see also* DOE Ex. 10 at 11–12. The Individual's wife managed administrative and financial aspects of his business, and he attributed some of his business' financial difficulties to debts and bills his wife failed to pay and of which he was unaware. DOE Ex. 10 at 12, 17; *see also* Tr. at 158. The Individual gambled during this period, and reported during the 2018 PSI that his gambling at that time “was probably the highest point of [his] gambling.” DOE Ex. 9 at 84. The Individual attributed this gambling to his failing marriage, and reported budgeting approximately five hundred dollars (\$500) per occasion for gambling “a couple times a week . . .” *Id.* at 27–28.

The Individual sought mental health assistance from the VA in late 2014, and, beginning in 2015, attended several individual psychological counseling sessions each week with VA clinicians. *Id.* at 57; *see also* DOE Ex. 7 at 2; *see also* Tr. at 143–44. During these sessions, the Individual discussed some of the traumatic events that he experienced during his military service and his PTSD symptoms. DOE Ex. 9 at 58; *see also* DOE Ex. 7 at 3. The Individual also discussed his gambling during these sessions, and stated during the 2018 PSI that the counseling addressed his gambling problem, that he recognized that “circumstances got overwhelming and [he] tried to find

[] escapes,” and that he had developed coping mechanisms to address his problems without relying on distractions such as gambling. DOE Ex. 9 at 58–59.

In October 2015, the Individual participated in a compensation and pension (C&P) evaluation for the purpose of increasing his disability rating. During the C&P evaluation, the Individual endorsed full-spectrum PTSD symptoms. *See* DOE Ex. 7 at 4. As a result of the C&P evaluation, the VA increased the Individual’s disability rating to one hundred percent (100%), including a disability rating of one hundred percent (100%) for PTSD.² Individual Ex. M at 2–4; *see also* DOE Ex. 7 at 6.

The DOE contractor hired the Individual in October 2015. *See* DOE Ex. 9 at 30. The Individual completed an e-QIP on November 11, 2015. DOE Ex. 11 at 52. The Individual indicated on his e-QIP that he had never experienced financial problems due to gambling. *Id.* at 46–47. However, treatment records from the VA indicated that the Individual engaged in “problematic gambling,” incurring significant losses and, on one occasion, gambling away rent money. *See* DOE Ex. 7 at 4–5. VA records reflect that VA clinicians considered the Individual’s gambling habits as within the scope of his treatment as recently as December 2015. *See id.* at 4. The Individual divulged several financial delinquencies during the 2017 PSI that he failed to disclose on the e-QIP, but did not mention his gambling-related VA counseling or significant gambling losses. *See id.* at 5. The Individual described his history of gambling in significant detail during the 2018 PSI, represented that he did not remember gambling away rent money, and indicated that he believed his answer on the e-QIP to the effect that he had never experienced financial problems due to gambling was accurate because he personally had tens of thousands of dollars in his bank account, the amount of money he lost gambling was significantly less than his business’ obligations, and it “wouldn’t have saved the situation” if he had invested the money he lost gambling into the business. DOE Ex. 9 at 60–64.

During the 2017 PSI, the Individual discussed several traumatic events that he experienced during his military service, including a combat-related injury he suffered in 2008 which he indicated caused him to suffer from a neurological disorder, reported that VA staff diagnosed him with PTSD, and identified his total VA-assigned disability rating as one hundred percent (100%). DOE Ex. 10 at 84–87, 99. The Individual reported that he had received VA counseling, and asserted that the VA “disenrolled [him] because [he] had made progress” *Id.* at 91. VA records provided to the DOE psychologist indicated that the Individual ceased attending VA counseling of his own volition and against the recommendations of VA clinicians. *See* DOE Ex. 7 at 4.

The DOE psychologist’s report from the Psychological Evaluation cited ten (10) instances in which she determined that the Individual presented a lack of candor concerning his psychological, emotional, and physical function. *Id.* at 6–7. In order to evaluate the Individual, the DOE

² A one hundred percent (100%) disability rating represents the maximum disability compensation that a veteran may receive for a particular service-connected disability, but does not indicate that a veteran is unable to work. “Unemployability” is determined separately from the percentage rating assigned to a particular service-connected disability, and some veterans designated as unemployable have a disability rating of less than one hundred percent (100%). *See* Individual Unemployability, U.S. Dep’t of Veterans Affairs, *available at* https://www.benefits.va.gov/compensation/claims-special-individual_unemployability.asp (last modified January 19, 2018). The Individual’s psychologist testified at the hearing that veterans, including the Individual, with a one hundred percent (100%) disability rating, but who are not rated unemployable, are able to work. Tr. at 188.

psychologist reviewed his VA treatment records and personnel security file, subjected the Individual to a Minnesota Multiphasic Personality Inventory-2 Restructured Form (MMPI-2-RF) personality test, and conducted a clinical interview of the Individual. DOE Ex. 7 at 2. VA records indicate that, as of October 2015, the Individual endorsed “full-spectrum PTSD symptoms” in connection with seeking a greater disability rating. *Id.* at 9. However, the DOE psychologist found that the Individual minimized his PTSD diagnosis because he did not specifically say that PTSD contributed to his disability rating during the 2017 PSI and reported that his disability rating for PTSD was thirty percent (30%) during the Psychological Evaluation when it was in fact one hundred percent (100%). *Id.* at 7, 9. Moreover, the DOE psychologist reported that the Individual told her that his gambling ended in 2014 and that he always met his financial obligations, which statements were inconsistent with the VA treatment records. *Id.* at 9. The DOE psychologist also concluded that the results of the MMPI-2-RF showed that the Individual presented a high level of virtuousness that caused her to question whether the Individual underreported dysfunction in other areas of the test. *Id.* at 8.

Upon completing her evaluation, the DOE psychologist determined that the Individual’s willingness to present highly inconsistent versions of his psychological, emotional, and physical functioning depending on the circumstances constituted a personality condition which can impair his judgment, stability, reliability, and trustworthiness. *Id.* at 9. The DOE psychologist further opined that the Individual’s prognosis was unlikely to change. *Id.* at 10.

During the hearing, three (3) of the Individual’s colleagues, a personal friend, and a business consultant who advised the Individual when he operated his business testified that they believed that the Individual demonstrated sound judgment, stability, reliability, and trustworthiness. Tr. at 16–17, 55–56, 72–73, 80, 83, 88, 96. The Individual testified that he has accepted his PTSD diagnosis, reenrolled in VA treatment in 2017, has attended individual counseling with a VA clinician, and voluntarily attends weekly group counseling sessions for military veterans with PTSD. *Id.* at 128, 131, 168–69. The Individual described various coping mechanisms he uses to control his PTSD symptoms, and testified that he feels the “controlled environment” at DOE is conducive to controlling his PTSD symptoms. *Id.* at 123–24, 167–68.

The Individual offered the testimony of a psychologist who the Individual contracted to evaluate him prior to the hearing. The Individual’s psychologist reviewed the DOE psychologist’s report, consulted the Individual’s medical records, interviewed the Individual, and subjected the Individual to a Personality Assessment Inventory (PAI) test. Tr. at 190–91; *see also* Individual Ex. K at 1. The Individual’s psychologist concluded that the Individual’s results on the PAI test were within normal limits and did not reflect an effort to distort the results. Individual Ex. K at 3; *see also* Tr. at 190–91, 193. The Individual’s psychologist opined that the Individual did not demonstrate a psychological condition that could impair his judgment, stability, reliability, and trustworthiness. Tr. at 217; *see also* Individual Ex. K at 5.

The DOE psychologist, after observing the hearing and all testimony offered therein, testified that her opinion was unchanged and that she believed the Individual’s inconsistent representations of his psychological, emotional, and physical function depending upon the circumstances constituted a personality condition which could impair his judgment, stability, reliability, and trustworthiness. Tr. at 234–35. The DOE psychologist testified that she considered the severity of the symptoms

the Individual reported during the C&P evaluation compared to those he reported during the Psychological Evaluation, the Individual's inconsistent description of his gambling habits, and minimization of his PTSD-related disability rating during the 2017 PSI and Psychological Evaluation as significant evidence of the Individual's personality condition. Tr. at 223, 227–29, 234–35.

Under cross examination, the DOE psychologist conceded that the Individual did not say during the 2017 PSI “that 100% of his disability was based on memory and neurological symptoms” as she had written in her report, that she could “see where there would be confusion” on the part of the Individual as to his disability rating, and that his misstatement of his disability rating for PTSD during the Psychological Evaluation was “not an important discrepancy . . .” Tr. at 245–47. The Individual offered testimony and evidence showing that he reviewed his VA disability rating online, learned that his disability rating for PTSD was one hundred percent (100%), and sent an e-mail message to the DOE psychologist the same day as the Psychological Evaluation to correct his misstatement concerning his PTSD-related disability rating. Tr. at 154–55, 165–66; Individual Ex. M.³

V. ANALYSIS

Guideline I Considerations

In this case, I am required to analyze the facts to determine which of two starkly differing narratives of the Individual's conduct better reflects his eligibility for a DOE security clearance.⁴ The DOE psychologist states that the Individual minimized his gambling and PTSD-related symptoms during the process of seeking his DOE security clearance as compared to his accounts to the VA and during the C&P evaluation, speculated that “malingering cannot be excluded,” and concluded that the Individual's willingness to present differing accounts of his wellbeing when doing so suits him is evidence of a personality condition which impaired his judgment, stability, reliability, and trustworthiness. DOE Ex. 7 at 9; *see also* Tr. at 229–31, 234–35.

In contrast, the Individual's psychologist found that the Individual does not have a psychological condition that impairs his judgement, stability, reliability, or trustworthiness, concluded that the Individual's reckless gambling and memory deficiencies were likely byproducts of the Individual's PTSD, and opined that the DOE psychologist “mischaracterize[d] the situation” with respect to several of the instances in which the DOE psychologist claimed that the Individual displayed a lack of candor. Individual Ex. K at 4–5; *see also* Tr. at 203, 217. Taking the totality of the record into account, I am convinced that the security concerns asserted by the LSO were the product of the Individual's PTSD symptoms, that the Individual's PTSD symptoms were aggravated by unusual events in the Individual's life, and that the Individual does not currently have a psychological condition that impairs his judgement, stability, reliability, or trustworthiness.

An Individual may mitigate security concerns under Guideline I if “the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has

³ The DOE psychologist claimed not to have received the e-mail message. Tr. at 224.

⁴ I note that neither mental health expert testified that the individual's PTSD in itself raised a security concern.

been resolved, and the individual no longer shows indications of emotional instability, [or] there is no indication or a current problem.” *Id.* at ¶ 29(d)–(e). After considering the expert testimony offered by the Individual’s psychologist and the DOE psychologist, I am not convinced that the Individual currently suffers from a psychological condition that impairs his judgment, stability, reliability, or trustworthiness.

The DOE psychologist’s opinion concerning the Individual’s personality condition relied upon instances in which the Individual displayed a lack of candor; however, the DOE psychologist unreasonably found several innocuous facts to be evidence of a lack of candor on the part of the Individual. The DOE psychologist testified that the instances of “lack of candor” by the Individual that she cited in her report were central to her conclusion that the Individual had a psychological condition. Tr. at 222–23. The DOE psychologist acknowledged that the Individual’s PTSD might have affected the Individual’s memory, but opined “that’s not as likely as it being about presenting in a certain way under certain circumstances.” *Id.* at 259. However, during the hearing, the DOE psychologist recanted several of her claims as to lack of candor by the Individual. *See supra* p. 6. Furthermore, the record does not support two (2) additional instances of lack of candor cited by the DOE psychologist. The DOE psychologist’s report states, without citing to any supporting evidence, that the OPM “Investigator received the information about [the Individual’s] PTSD diagnosis from sources, not from [the Individual] until he was asked about it [during the 2017 PSI].” DOE Ex. 7 at 6. However, the OPM report of investigation makes repeated mention of the Individual’s PTSD in the section describing the OPM Investigator’s November 4, 2016 interview with the Individual. DOE Ex. 11 at 59, 65. These entries directly contradict the DOE psychologist’s claim that the Individual hid his PTSD from the OPM Investigator. The DOE psychologist also claimed that the Individual displayed a lack of candor by not disclosing his employment with the DOE contractor during the C&P evaluation held twelve (12) days after he was hired. DOE Ex. 7 at 6, 9. However, the Individual completed the intake form for the C&P evaluation prior to his hiring by the DOE contractor; nothing in the record besides the DOE psychologist’s account of how she has conducted C&P evaluations indicates that the Individual was asked to update his employment information during the C&P evaluation, and the DOE psychologist admitted during the hearing that misrepresenting his employment status could not have helped the Individual secure a more advantageous disability rating. Individual Ex. K at 4; Tr. at 226–27, 247–51.

The record also shows that the Individual was forthcoming about his PTSD diagnosis throughout the review of his eligibility for a security clearance. While the Individual did not agree with his PTSD diagnosis in the past, the OPM report of investigation, 2017 PSI, and Psychological Evaluation all contain entries reflecting that the Individual shared the diagnosis. DOE Ex. 11 at 59, 65; DOE Ex. 10 at 99; DOE Ex. 7 at 7. The Individual also demonstrated truthfulness concerning his PTSD when he sent an e-mail to the DOE psychologist hours after the Psychological Evaluation to clarify his disability rating for PTSD. Individual Ex. M. The Individual’s disclosure of his PTSD diagnosis throughout this process, and his voluntary efforts to correct his misstatement to the DOE psychologist concerning his PTSD-related disability rating, undermine the DOE psychologist’s claims that the Individual intentionally misrepresented his health based on the circumstances.

The Individual’s psychologist opined that, contrary to the findings of the DOE psychologist, the Individual does not presently suffer from a psychological condition that could impair his judgment,

stability, reliability, and trustworthiness. Tr. at 217. The Individual's psychologist discussed the merits of the PAI she administered to the Individual, and why she believed the PAI more appropriate to the Individual in light of his personal history than the MMPI-2-RF administered by the DOE psychologist. Ind. Ex. K at 3; Tr. at 191. Specifically, the Individual's psychologist asserted that the Individual's MMPI-2-RF test results indicated rigidity, not misrepresentations, and that the PAI was more appropriate for subjects like the Individual with military service and traditional values. Tr. at 199–200. The Individual's psychologist further opined that the Individual did not currently demonstrate behavior evidencing a psychological condition that could impair his judgment, stability, reliability, and trustworthiness. Ind. Ex. K at 5; Tr. at 217. The Individual's psychologist also asserted that the Individual's prior gambling and inconsistent recollection of events were products of his PTSD, and opined that these issues subsided as the Individual obtained treatment and learned to cope with his PTSD. *Id.*; *see also* Tr. at 189–90, 200–03.

In this case, the Individual's reports of his symptoms to the VA, which the DOE psychologist believed he exaggerated, occurred shortly after the Individual suffered a divorce, the death of his father, and the loss of his business. The DOE psychologist concurred that this was a time of extreme stress for the Individual. Tr. at 255. Since that time, the Individual has participated in individual and group counseling. The DOE psychologist testified at the hearing that she believed that "the treatment has been very helpful for [the Individual;] [h]e's been diligent about attending that treatment and getting the help that he needed." *Id.* at 231. Likewise, the Individual's psychologist testified as to the Individual's improved ability to manage his PTSD symptoms as a result of his years of treatment for PTSD. *Id.* at 200–02. The Individual's losses were unique, significant events that likely temporarily exacerbated the Individual's PTSD symptoms. These issues have been resolved, and the Individual is pursuing counseling and healthy coping mechanisms. Moreover, neither the Individual's colleagues and friends who testified at the hearing, nor the Individual's psychologist, perceived any indication of a current problem. Accordingly, I find that the past emotional instability was a temporary condition caused by a confluence of stressful factors, that the situation has been resolved, and that the individual no longer shows indications of emotional instability. I also find that there is no indication or a current problem. Therefore, the Individual has mitigated the concerns pursuant to Guideline I at ¶ 29(d) and (e).

The record establishes that the Individual reported significantly more severe PTSD symptoms in 2015 when pursuing treatment at the VA and seeking an increased disability rating than he did during the Psychological Evaluation and PSIs, and that he provided inconsistent accounts of his gambling habits. The Individual's psychologist testified that the Individual's PTSD symptoms were exacerbated by the significant events that occurred in the Individual's life in 2014 and are now under control as a result of treatment, that the Individual's inconsistent memory was a symptom of his PTSD, and that the Individual does not currently have a psychological condition that could impair his judgment, stability, reliability, and trustworthiness. I find this opinion to be significantly more compelling than the DOE psychologist's opinion that the inconsistencies show a willingness on the part of the Individual to misrepresent his health so as to secure government benefits.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline I of the Adjudicatory Guidelines. 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 set forth in the Notification Letter. Accordingly, I have determined that the Individual's access authorization should be granted. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals