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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 15, 2019) Case No.: PSH-19-0020
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Issued: July 11, 2019

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “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 security clearance should not be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires him to hold a security clearance. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it was in possession of information creating a substantial doubt concerning the Individual’s eligibility to obtain a security clearance and that he was entitled to a hearing before an Administrative Judge in order to resolve the doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on April 15, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses, including himself. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-19-0020 (hereinafter cited as “Tr.”). The LSO submitted seven exhibits, marked as Exhibits 1 through 7 (hereinafter cited as “Ex.”). The Individual submitted four exhibits, marked as Exhibits A through D.

¹ Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline I (Psychological Conditions) of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline I addresses certain emotional, mental, and personality conditions that can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines ¶ 27. An opinion from a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness could raise a Guideline I security concern. *Id.* ¶ 28(b). The LSO alleges that a DOE consulting psychologist diagnosed the Individual with Depression and Anxiety Disorder, Unspecified, which, in his opinion, are conditions that could impair the Individual's judgment, stability, reliability, and trustworthiness. Ex. 1. Accordingly, the LSO's security concerns under Guideline I are justified.

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In 2015, the Individual admitted himself to the hospital because of depression and suicidal ideation. Ex. 4. At the hearing, the Individual's fiancée explained that the Individual, after speaking with his mother and aunt, who is a therapist, decided he should seek treatment for his depression and admitted himself to the hospital. Tr. at 24. After his release from the hospital, he consulted with a Psychiatrist (Individual's Psychiatrist) who diagnosed the Individual with Depression and Anxiety Disorder, Unspecified. Ex. D at 29. The Individual's Psychiatrist saw the Individual in January, February, and June of 2016, followed by once in 2017 and once in 2018. Ex. D. In addition, the Individual's Psychiatrist prescribed medications for the Individual. *Id.* The DOE consulting psychologist acknowledged that the Individual followed all of the Individual's Psychiatrist's recommendations, which resulted in once-a-year appointments in 2017 and 2018. Tr. at 72.

On his Questionnaire for National Security Position (QNSP), the Individual admitted that he had been hospitalized for suicidal ideation and depression. Ex. 7 at 40. Upon receipt of that information, the LSO asked that the Individual be evaluated by a DOE consulting psychologist. In February 2019 the DOE consulting psychologist examined the Individual and prepared a written report confirming the Individual Psychiatrist's diagnosis of Depression and Anxiety Disorder, Unspecified. Ex. 5 at 6. In the report, the DOE consulting psychologist found that the Individual showed symptoms of major depression, despite being in treatment with the Individual's psychiatrist for over two years. He opined that these symptoms place the Individual in the top seven percent of people suffering from depression as compared with other people that are diagnosed with major depression. *Id.* In his report, the DOE consulting psychologist recommended that (1) the Individual's medication treatment program be reevaluated; (2) the Individual enter weekly individual therapy sessions with an appropriately licensed professional; and (3) the Individual should demonstrate that he has been symptom-free for a period of one year. *Id.* at 6. At the hearing, the DOE consulting psychologist opined that the Individual's medication program had not been reevaluated since his February 2019 evaluation and that the Individual had not undertaken weekly professional therapy. *Id.* at 67. He concluded that he would be more confident of the Individual's prognosis after he had been on a new medication program for a few weeks and had demonstrated attendance in weekly therapy for three to six sessions. *Id.* at 71.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions regarding the granting or denial of a security clearance include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an acceptable risk to national security and the common defense. I must consider all of the evidence, both favorable and unfavorable, in a common sense manner. "Any doubt concerning personnel being considered

for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

The Adjudicative Guidelines outline conditions that could mitigate the Guideline I security concerns, including:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) there is a recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guidelines ¶ 29(a)-(e). The Individual has failed to show that he meets any of the Guideline I mitigation factors listed above. His condition is readily controllable with treatment, and the Individual has demonstrated an ongoing and consistent compliance with the treatment plan recommended by the Individual’s Psychiatrist; however, this recommended treatment plan has not resulted in the control of the Individual’s condition, as evidenced by the DOE consulting psychologist’s evaluation of the Individual. Ex. 5 at 6. The DOE consulting psychologist opined in his evaluation that the Individual was “currently acknowledging symptoms of major depression.” *Id.* He identified those symptoms as: (1) more depression in general terms of sadness, empty feelings; (2) diminished interested in some activities; (3) fatigue and loss of energy; and (4) diminished ability to think and concentrate. Tr. at 69-70.

Although the Individual voluntarily entered the hospital and consulted with a psychiatrist, his condition has not been controlled by his current medication program and yearly counseling. Further, the Individual has not received a favorable prognosis by the DOE consulting psychologist.² Although the DOE consulting psychologist suggested in February 2019 that the Individual needed

² The Individual’s psychiatrist did not testify. In fact, the Individual had not consulted with his psychiatrist since 2018, because his latest appointment, which was to have occurred in April, was cancelled and not rescheduled until after the date of the hearing. Exs. C, D.; Tr. at 42, 47, 48,

to have his medication program reevaluated and that he needed to be in individual weekly therapy, as of the time of the hearing, the Individual had not either consulted with the Individual's Psychiatrist for a reevaluation of his medications nor started therapy.

For all of these reasons, I cannot find that the Individual has resolved the Guideline I concerns raised by the Individual's psychologist condition.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline I of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual 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.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals