

*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: April 23, 2019) Case No.: PSH-19-0031
)
)
_____)

Issued: August 30, 2019

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 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 May 23, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of seven witnesses, including himself. The LSO presented the testimony of a DOE-contractor psychologist (DOE Psychologist) who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-19-0031 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 7 (hereinafter cited as “Ex.”). The Individual submitted two exhibits, marked as Exhibits A and B.

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 Guidelines E (Personal Conduct) and 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 E addresses conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Adjudicative Guidelines ¶ 15. Such conduct can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* Of special interest is any failure to provide truthful and candid answers during the national security investigative process. *Id.* The LSO states that the DOE psychologist opined that the Individual demonstrated a lack of candor in a variety of circumstances, and thus, his trustworthiness was suspect. Ex. 1 at 1. The LSO also alleges that the Individual omitted his four hospitalizations for mental health issues from his Questionnaire for National Security Positions (QNSP) and during his interview with an Office of Personnel Management (OPM) investigator. The LSO also alleges that the individual omitted from his QNSP two unpaid debts, one of which was assigned to collections and one of which was charged off. *Id.* at 1-2. Accordingly, the LSO's security concerns under Guideline E are justified.

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 psychologist diagnosed the Individual with Unspecified Personality Disorder, in partial remission, which can impair his judgment, stability, reliability, or trustworthiness. Ex. 1 at 2. 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 at the hearing in this case.

IV. FINDINGS OF FACT

In August 2017, September 2017, December 2017, and January 2018, the Individual was taken to the hospital for mental health concerns. Ex. 1 at 1. During this time, he was a 21-year-old college student. Tr. at 155. He testified that he was never held overnight, never assigned a hospital room, and never held longer than 24 hours. *Id.* at 102. At no time was the Individual admitted to the hospital; he was always an outpatient. Most of the time was spent in a waiting room. *Id.* at 104-105. The Individual stated, “I interpreted hospitalization as being an inpatient in a hospital—not just being brought there and then let go.” *Id.* at 100.

Regarding the two debts raised as security concerns, the Individual maintained that he had no knowledge of those debts. Tr. at 116-17. He stated that the statements for both the debts were sent to an address where he has not lived since attending high school. *Id.* at 120-21.

The Individual’s counselor testified that he first came to see her because he was having difficulty adjusting to his life in a new city, and that he was homesick. Tr. at 13. She stated that after their first few counseling sessions, the Individual became very proactive in becoming involved in his community. *Id.* The counselor claimed that the Individual has adjusted well to his new community and that if he has issues in the future, she is confident he will consult with her again. *Id.* at 13, 22.

The Individual had five character witnesses testify—one co-worker, two fellow students from college, and two professors from his undergraduate degree program. The co-worker testified that in his experience with the Individual, which spans a little more than one year, the Individual has been responsible, honest, and trustworthy. Tr. at 37-38. The two fellow students testified that they speak to the Individual, either by telephone or text message, almost every day. *Id.* at 43, 81. They both know him from college. Both of the witnesses worked with the Individual at college. *Id.* at 47, 85. One of his classmates testified that the Individual was the supervisor at their work placement where he was responsible for millions of dollars of equipment, and that he was very responsible and honest. *Id.* at 48. The other classmate testified that the Individual is honest to the extent that he would correct people if they were not following the rules. *Id.* at 86.

The Individual's two professors also testified to the Individual's honesty. The first professor indicated that she only agreed to testify for the Individual because she believed in the Individual's honesty, reliability, trustworthiness, and candor. Tr. at 61. She also testified that she employed the Individual while he was at school and would have only kept him in that position if he "showed those traits, because he had to be self-motivated." *Id.* at 61. The first professor stressed that those traits were why she continued to employ him for three years. *Id.* at 61. She reiterated what the Individual's classmates said, that anyone working in his work placement would need to be trustworthy due to the dollar amount of equipment for which he was responsible. *Id.* at 62.

The second professor indicated that he came to know the Individual quite well, and that they developed a close relationship outside of the classroom. *Id.* at 70-71. He stated that there was never an occasion where the Individual did not keep his word and that he is extremely reliable. *Id.* at 71. He stated that he would trust the Individual with the care of his children or to watch over his home. *Id.* The second professor concluded that the Individual was "one of those few students who became a member of our family." *Id.* at 72.

The DOE psychologist testified that she diagnosed the Individual with Unspecified Personality Disorder. Tr. at 165. At the hearing, she testified that the Individual was in full remission. She opined that the Individual's age and maturity, along with school and financial pressures, created a "perfect storm" that challenged his coping abilities. *Id.* at 176. The DOE psychologist also stated that, at the time of the hearing, the Individual no longer had an emotional, mental, or personality condition that could impair his judgment, stability, reliability, or trustworthiness. *Id.* at 177. She concluded:

I would just elaborate on that what [the Individual] just showed just now, I think, are very positive signs. First, that he realizes there may be some things to do, some work to do before another relationship. And secondly, in my report I make reference to a number of people saying you can't confront him, he doesn't take confrontation well, and I -- I would say that today he has demonstrated -- because this is -- it's not done in a confrontational manner, but it's still confrontational messages that he has handled very well, accepted and -- and run with.

Tr. at 181.

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 granting security clearances, I must not grant a security clearance if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

A. Guideline E

The adjudicative Guidelines outline conditions that could mitigate the Guideline E security concerns, including that the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment. Adjudicative Guidelines ¶ 17(c). As an initial matter, I note that the DOE psychologist no longer believed that the Individual had an issue with his candor. In addition, the Individual credibly testified that he did not believe that “hospitalization” also included being taken to the hospital and not being assigned a room and kept overnight. The Individual testified that he was not aware of the two outstanding debts because he did not receive the bills. I found him to be straightforward, sincere and credible in his testimony. Further, I find credible his explanation that he did not believe that being taken to the hospital would qualify as a “hospitalization” as understood by the LSO. I believe that the Individual’s “omissions” on the QNSP regarding his hospitalizations and debts were not intentional. The omission regarding his “hospitalizations” was the result of confusion over the terminology. The omission regarding his debts was not an omission, but rather a lack of knowledge.

For these reasons, I find that the Individual has resolved the Guideline E concerns raised by the Individual’s personal conduct.

B. Guideline I

The Adjudicative Guidelines outline conditions that could mitigate the Guideline I security concerns, including: 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; or there is no indication of a current problem. Adjudicative Guidelines ¶ 29(c), (e).

At the hearing, the DOE psychologist opined that the Individual’s condition is now in full remission. Further, she stated that the Individual no longer had an emotional, mental, or personality condition that could impair his judgment, stability, reliability, or trustworthiness.

For these reasons, I find that the Individual has resolved the Guideline I concerns raised by the Individual’s psychological 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 Guidelines E and I of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that granting 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 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