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September 24, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 3, 2009

Case Number: TSO-0730

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as "the Individual") to obtain a security clearance under the 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." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's security clearance should not be granted.

I. BACKGROUND

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. Specifically, the LSO characterized this information as indicating that the Individual had deliberately misrepresented or omitted required information during the DOE security clearance process, engaged in unusual conduct which brought her honesty, trustworthiness, and reliability into question, and been diagnosed by a licensed clinical psychologist with an illness or mental condition of a nature which causes, or may cause, a significant defect in judgment or reliability.¹

¹ The Notification Letter alleges that the Individual has: (1) "deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for Sensitive (or National Security) Positions . . . in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31," 10 C.F.R. § 710.8(f); (2) "An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability," 10 C.F.R. § 710.8(h); and (3) "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

The Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. 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 Hearing Officer in this matter on April 6, 2009.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from a Personnel Security Specialist, the Individual, her supervisor, and the DOE Psychologist. *See* Transcript of Hearing, Case No. TSO-0730 (hereinafter cited as "Tr."). The LSO submitted 18 exhibits, marked as DOE Exhibits 1 through 18, while the Individual submitted 11 exhibits, marked as Individual's Exhibits 1 through 11.

II. FINDINGS OF FACT

The QNSP

On May 23, 2005, the Individual, completed, signed, and submitted a Questionnaire for National Security Positions (QNSP) to the Local Security Office (LSO).² Question 21 of the QNSP asked "In the last 7 years have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?" DOE Exhibit 10 at 7. The Individual checked the box labeled "no" in response to this question. *Id.*

Question 22 of the QNSP asked if the Individual had, in the last 7 years, left a job under various unfavorable circumstances and asked the applicant to list every job left under unfavorable circumstances during the previous seven years. *Id.* The Individual checked the box labeled "yes" in response to this question and listed one such employment at Employer A. *Id.*

The OPM Investigation

The Office of Personnel Management (OPM) conducted a routine investigation of the Individual and issued a report of its investigation on August 28, 2007.³ The OPM Report indicates that its investigation was conducted from August 25, 2005, until April 1, 2006. DOE Exhibit 18 at 24. The OPM investigation revealed a large volume of derogatory information concerning the Individual. During her interview with the OPM investigator, the Individual admitted that she had physically attacked a former roommate by grabbing her hair, pulling her down and then hitting her.⁴ DOE Exhibit 18 at 24. The Individual had been consuming alcohol to the point of

² The original version of this QNSP appears in the record as Exhibit 10. A corrected version of this QNSP appears in the record as DOE Exhibit 11.

³ The OPM Report appears in the record as DOE Exhibit 18.

⁴ The OPM investigator interviewed the Individual's former roommate. The former roommate reported that the Individual had physically attacked her. DOE Exhibit 18 at 46.

intoxication when this incident occurred. The Individual also indicated that while she was employed as a temporary worker, she was dismissed from a work assignment because she had written “mow [the Individual’s name] grass” on a coworker’s calendar. *Id.* The Individual indicated that she was employed at the time by a temporary agency which promptly reassigned her to another employment location. *Id.* Her employer at the time of this incident is listed on her QNSP as the temporary agency. *Id.*

The Individual informed the OPM Investigator that she had been employed by Employer A. DOE Exhibit 18 at 25. While employed at Employer A, the Individual had difficulty keeping up with the workload. *Id.* When she complained to her supervisor, she was informed that she had two weeks to “shape up.” *Id.* The Individual then resigned from Employer A. *Id.*

The Individual also indicated that she had been employed as a psychiatric technician by Employer B. DOE Exhibit 18 at 25. The OPM Report states that Employer B found her to be “unsuitable for this position” and laid her off. *Id.* The OPM Report indicates that the Individual reported that she did not list her employment by Employer B in her QNSP because her termination by Employer B did not fit any of the definitions set forth in QNSP Question No. 22. DOE Exhibit 18 at 28.

The OPM investigator interviewed Employer B’s human resources administrator. The human resources administrator supplied the OPM investigator with the Individual’s personnel file. That file contained a memorandum signed by a former personnel director which states in pertinent part: “[The Individual] was separated during this interim period of employment as a result of concerns from clinical management relating to behaviors on the job which would most likely interfere with [the Individual’s] ability to provide full attention to the care and treatment of our patients.” DOE Exhibit 18 at 49.

The OPM investigator interviewed a representative of a temporary agency that had employed the Individual. The representative indicated that the Individual had been placed in three assignments from which the temporary agency’s customers asked that she be removed. DOE Exhibit 18 at 39-41.

The OPM investigator interviewed the office manager of Employer A. The office manager indicated that the Individual had been hired as a buyer/planner with some receptionist and accounting responsibilities. DOE Exhibit 18 at 41-42. The office manager further stated that the Individual was terminated because she:

Was unable to perform her duties and unsatisfactory job performance. The [Individual] did not enter some invoices into the record keeping system and they were later found in the trash can. Several prior warnings had been given to the [Individual] about her work, to which the [Individual] responded additional help needed to be hired because her work was too much for one person to handle.

DOE Exhibit 18 at 52. The office manager also asserted that the Individual had contacted Employer A and indicated that she would consult with an attorney if Employer A did not

describe her title as a buyer or planner to prospective employers contacting Employer A for references. *Id.*

The OPM investigator interviewed a senior manager of Employer C, who indicated that the Individual “would sometimes inflate her title or importance in her job when dealing with customers.” DOE Exhibit 18 at 44. The senior manager further indicated that “she was cautioned to use her true title in her job activities.” *Id.*

The PSIs

The LSO conducted two Personnel Security Interviews (PSI) of the Individual. The first PSI was conducted on November 15, 2007, and the second PSI was conducted on November 19, 2007.⁵

During the November 15, 2007, PSI, the Individual indicated that she was prescribed Cymbalta, which she described as an anti-anxiety medication. DOE Exhibit 6 at 14. The Individual was also asked about the circumstances under which she left Employer A. The Individual explained that she resigned, effective immediately, when she was informed that she had two weeks to improve her performance. *Id.* at 19-20. The interviewer told the Individual that Employer A asserted that she failed to enter some invoices which were subsequently found in a trash can. The Individual denied this assertion. *Id.* at 21. The interviewer also stated that Employer A had asserted that the Individual had threatened legal action against Employer A if it did not describe her former position as buyer/planner to her prospective employers seeking confirmation of her employment with Employer A. Employer A apparently did not consider the Individual to have been a buyer or planner. The Individual stated that she was in fact hired as a buyer/planner. *Id.* at 22-24. The Individual also stated “I did let them know that if there were slanderous remarks made that I would talk to an attorney to find out what my options were.” *Id.* at 23-24. The Individual admitted that she had not included her employment at Employer A in the application she submitted to Employer D. *Id.* at 25. The Individual contended that she verbally informed Employer D of her employment with Employer A. *Id.* The interviewer stated to the Individual that Employer E had indicated that it cautioned her against using an inflated job title when interacting with customers. *Id.* at 28. The Individual denied this allegation. *Id.* at 31.

When the Individual was asked why she left Employer B, she stated that she left because she was unable to pass a test. *Id.* at 40.

The Individual was asked about accessing her ex-husband’s financial records on-line. The Individual stated that she had done so at his request. She was only able to do so because he had provided her with his password. *Id.* at 52-54. She denied that she had ever accessed her ex-husband’s account with malicious intent. *Id.* at 54.

The Individual stated that she was arrogant when employed by Employer E. *Id.* at 31. The

⁵ The transcript of the PSI conducted on November 15, 2007, appears in the record as DOE Exhibit 6. The Transcript of the PSI conducted on November 19, 2007, appears in the record as DOE Exhibit 7.

Individual later stated that she was arrogant as a student in college. *Id.* at 49.

At the November 19, 2007, PSI, she admitted physically attacking her roommate on the Individual's 21st birthday. DOE Exhibit 7 at 32. The Individual further admitted that she had been consuming alcohol at the time of this incident. *Id.* The Individual opined that she "used to have a temper problem." *Id.* at 36. However, she believes she has matured since then. *Id.* The Individual stated that she still has a problem with "worrying too much." *Id.* The Individual indicated that she and her child had received family counseling services while she was undergoing a divorce in 2005. *Id.* at 42-43. The Individual emphatically stated that she has never been arrogant. *Id.* at 52. The Individual indicated her intention to obtain further counseling. *Id.* at 63. The Individual stated that she still has some self-esteem issues. *Id.* The Individual stated that she had been diagnosed with depression and anxiety by her family doctor. *Id.* at 65. She admitted that a lot of people saw her as arrogant. *Id.* at 68.

The Family Doctor's Report of Medical Treatment

The day after the November 19, 2007, PSI, the Individual submitted a report of medical treatment signed by her family doctor.⁶ The report of medical treatment indicated that the Individual suffered from depression and a seizure disorder. The report of medical treatment further indicated that the family physician believed that the Individual's prognosis was good, and that her judgment was not impaired. DOE Exhibit 12 at 1.

The Psychologist's Evaluation

At the request of the LSO, the Individual was evaluated by a DOE consultant psychologist (the Psychologist). The Psychologist reviewed selected portions of the Individual's personnel security file, interviewed the Individual, and administered three standardized psychological tests to the Individual.⁷ After completing his evaluation of the Individual, the Psychologist issued a report in which he opined, in pertinent part:

She presents with a mental condition that is diagnosable and there would be a likely consensus from her history and testing that she is reliably diagnosed with a narcissistic personality disorder. There are histrionic and borderline features as well. . . . She is reliably diagnosed in the Cluster B personality disorders and demonstrates histrionic and borderline features depending on the context and demand.

DOE Exhibit 8 at 7. The Psychologist recommended that the Individual receive a psychiatric consultation and personal psychotherapy to address her disorder. *Id.* at 8. In a letter to the LSO

⁶ A copy of this report appears in the record as DOE Exhibit 12.

⁷ Specifically, the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Personality Assessment Inventory (PAI), and the Quickview Social History Basic Report and Clinical Supplement (QSHBRCS).

dated October 8, 2008, the Psychologist further opined that the Individual “had not demonstrated a history of reliability” and that her “habitual pattern of poor judgment and significant deficits in trustworthiness is unlikely to change.” DOE Exhibit 9 at 1.

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. ANALYSIS

A. Criterion F

The Notification Letter alleges that the Individual omitted information from her QNSP. Specifically, the Notification Letter alleges that the Individual's answer to QNSP Question 22, which asked if the Individual had left a job under various unfavorable circumstances during the preceding seven years, was incomplete. The Individual only listed one job that she left under unfavorable circumstances, Employer A. The Notification Letter asserts that the Individual left several other employers under unfavorable circumstances during the seven-year period preceding the QNSP. Specifically, the Notification Letter asserts that the Individual was terminated by Employer B and left several temporary assignments under unfavorable circumstances.

The Notification Letter also alleges that the Individual's answer to QNSP Question 21, which asked if she had consulted with a mental health professional or another health care provider about a mental health related condition, was incomplete. The Individual's answer to Question 21, provided on May 23, 2005, indicated that she had not done so. However, during her November 15, 2007, and November 19, 2007, PSIs, the Individual indicated that her family physician had diagnosed her with depression and anxiety and prescribed her with Cymbalta, a psychotropic medication. Accordingly, the LSO properly invoked Criterion F.

Deliberately omitting or concealing relevant facts in a process for determining eligibility for access authorization demonstrates questionable judgment and lack of candor, and can also raise

questions about an individual's reliability, trustworthiness and ability to protect classified information. See Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

The Individual's testimony has not resolved the security concerns arising from her omission of Employer B from her response to QNSP Question 22. While the Individual's demeanor at the hearing appeared credible, her explanations of how she came to omit the circumstances surrounding her departure from Employer B have been somewhat inconsistent. At the hearing, the Individual first attributed her omission of Employer B from her response to QNSP Question 22 to an inadvertent lapse of memory. Tr. at 214. She then testified that she was not "technically" required to list her employment at Employer B because she worked there less than 90 days. Tr. at 214. She next testified that she omitted her employment at Employer B because she "thought [she] was laid off from [Employer B]." Tr. at 215. She further noted that she had correctly reported her departure from Employer A under unfavorable circumstances at her November 15, 2007, PSI. Tr. at 215.⁸ The Individual's inconsistent statements regarding her omissions prevent me from being sufficiently convinced of her credibility to allow me to conclude that she has mitigated the concerns arising from her omission of her departure from Employer B under unfavorable circumstances.

The evidence in the record shows that two temporary agencies employed the Individual during the seven years preceding her submission of the QNSP. This evidence also shows that the Individual's employment at a number of her assignments under these temporary agencies ended under unfavorable circumstances. The Individual's answer to QNSP Question 22 does not include any of these assignments. The Individual indicates that she omitted these events from her response to Question 22 because she was employed by the temporary agencies rather than the firms where the temporary agencies assigned her to work. Because Question 22 is ambiguously worded, the Individual's conclusion that she was not required to list job assignments from which she was removed appears reasonable, and her omissions are understandable under the circumstances. The security concerns raised by her omission of her temporary job assignments from which she was removed from her response to Question 22 are therefore resolved.

The Notification Letter's allegations that the Individual omitted treatment for depression and anxiety by the Individual's family doctor from her response to Question 21 have also been resolved by the Individual's testimony. The Individual provided her response to Question 21 on May 23, 2005. The Individual testified that her family doctor began treating her for anxiety and depression in October or November of 2005. Tr. at 233-234, 237-238. There is no evidence in the record contradicting this testimony. Accordingly, I am convinced that the Individual did not report her physician's prescription of an anti-anxiety and anti-depression drug on her May 23,

⁸ The Individual had reported to the OPM Investigator that she omitted her employment at Employer B from her QNSP because the circumstances concerning her departure from Employer B did not fit any of the definitions set forth in Question No. 22. During her November 15, 2007, PSI, she had stated that she left Employer B, because she was unable to pass a test and was agitated by a patient's behavior. DOE Exhibit 6 at 40.

2005, QNSP because she did not receive this prescription until several months after she submitted the QNSP.

B. Criterion H

As I have discussed above, the Psychologist diagnosed the Individual with a narcissistic personality disorder with histrionic and borderline features. The Psychologist further opined that the Individual “had not demonstrated a history of reliability” and that her “habitual pattern of poor judgment and significant deficits in trustworthiness is unlikely to change.” DOE Exhibit 9 at 1. The Psychologist recommended that the Individual receive a psychiatric consultation and psychotherapy to address her disorder. *Id.* at 8. Accordingly, the LSO properly invoked Criterion H.

At the hearing, the Individual acknowledged that she has a personality disorder. To the Individual’s credit, she realizes that this disorder has been the source of interpersonal and workplace difficulties for her and recognizes the necessity for change in order to address her disorder. She has testified that she recognizes that she needs counseling and has been sporadically meeting with a counselor. She is also being treated with medication, Cymbalta, which improves her functioning as well as her ability to address her disorder. Moreover, the Individual has presented a great deal of evidence, including the testimony of her present supervisor, showing the interpersonal and vocational progress that the Individual has made during the preceding year. The Individual is now a highly valued employee.

The Individual’s acceptance of the diagnosis and recognition that she must address it are excellent first steps toward mitigation of the security concerns raised by her personality disorder. However, her progress has not sufficiently mitigated these concerns for me to conclude that they have been resolved in her favor. At the hearing, the Psychologist convincingly testified that the Individual needs to adopt a more intensive approach to addressing her disorder. According to the Psychologist, the Individual needs a full psychiatric evaluation and then must engage in intensive psychotherapy. Without such treatment, there is a concern that the Individual will experience a return of the disorder’s symptoms.

C. Criterion L

The record shows that the Individual physically attacked her roommate. The Individual also has an extensive history of workplace issues. A significant number of her co-workers and employers have reported concerns about the Individual’s emotional stability, judgment, reliability and honesty.⁹ This information raised security concerns under Criterion L.

The security concerns raised by the Individual’s attack on her former roommate have been mitigated by the passage of time, over eight years, without further incidents of violence. Moreover, this incident occurred on the Individual’s 21st birthday, when she was of a relatively

⁹ The Individual also had a number of attendance and performance issues at employers and firms where she worked as a temporary. However, poor performance alone does not raise security concerns.

youthful age.

The concerns raised about her emotional stability, judgment, reliability, honesty and trustworthiness have been somewhat mitigated by the passage of time. Moreover the behaviors which led to these concerns are likely attributable to her personality disorder. Since the Individual has recognized that she has a personality disorder and has begun to seek treatment for the disorder, these concerns have been partially mitigated. For the same reasons that the Criterion H concerns remain unresolved so are the Criterion L concerns that stem from her personality disorder.

The Notification Letter also asserts that the Individual (1) accessed her estranged husband's financial records, (2) threatened legal action against an employer if it were to provide inaccurate information to prospective employers, (3) was suspected by Employer B of misappropriating funds and falsifying official documents, and (4) omitted the name of a former employer from a job application in order to improve her chances of being hired.

It is not clear why the LSO asserts that accessing an estranged spouse's financial records raises a security concern, especially in light of the fact that the Individual submitted a copy of a general power of attorney signed by the Individual's ex-spouse that provided the Individual with broad powers over the ex-spouse's financial affairs. Individual's Exhibit 11. Nor has the LSO explained why an Individual's assertion of her legal rights in a dispute raises a security concern. The accusation that the Individual was suspected by Employer B of misappropriating funds and falsifying official documents is not sufficiently supported in the record. The record only shows that a document in her personnel file relating to the Individual's application for unemployment benefits has a handwritten comment stating "willful abuse or misappropriation of state funds falsification of an official document affecting employee." DOE Exhibit 18 at 49. It is not clear who added this comment to this document or whether this comment even pertains to the Individual. Therefore, I do not consider it to be reliable information which raised a security concern about the Individual. Finally, I note that the Individual apparently omitted Employer A from her employment history on an employment application submitted to a recent employer. This omission does not raise a significant security concern under Criterion L.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria F, H, and L. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that granting her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: September 24, 2009