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March 11, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 12, 2003

Case Number: TSO-0072

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization. 1/ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I have determined that the individual's access authorization should be restored.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to her eligibility for an access authorization in connection with her work. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a statement of the derogatory information.

The concern cited in the Letter involves information indicating that in a report dated June 11, 2002, a DOE consultant psychiatrist (DOE psychiatrist) diagnosed the individual as suffering from Major

1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

Depressive disorder. She believed that this disorder may cause a significant defect in the individual's judgment and reliability. According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(h) (Criterion H). 2/ The Letter further noted that in June 2000, the occupational medical director of the plant where the individual worked found that the individual did not meet the requirements for retention in the site's Personnel Assurance Program (PAP). It was his opinion that at that time, due to her need for psychoactive drugs to control her "major depressive disorder," the individual could not safely and reliably perform her duties. The Letter also referred to an event in April 2000 in which the individual was arrested for disorderly conduct during an incident, involving a family argument, in which the police were called to her home.

The Notification Letter informed the individual that she was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual was represented by an attorney. The individual testified on her own behalf, and presented the testimony of a psychologist who treated her (psychologist or therapist), a psychologist at the plant where she works, her daughter, her husband, and a close friend who also is a plant employee. The DOE Counsel presented the testimony of the DOE psychiatrist. The individual also introduced into evidence a letter setting forth the results of a psychiatric evaluation which was performed by the individual's psychiatrist about two weeks before the hearing. 3/ In addition, the individual submitted into evidence a number of letters and memos of support and commendation from her co-workers and supervisors.

2/ Criterion H includes information that the individual has an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.

3/ This psychiatrist did not treat the individual, but was engaged solely for the purpose of providing an evaluation.

III. Hearing Testimony and Documentary Evidence

A. Hearing Testimony

1. The Individual's Therapist

The individual's therapist testified that he began treating the individual in January 2000. He stated that he saw her on a weekly basis until September 2003, and thereafter on a monthly basis, which is presently continuing. Transcript of Hearing (hereinafter Tr.) at 12.

He believes that the individual's depression stemmed from marital difficulties, which led to her feelings of fatigue, helplessness and hopelessness. He also stated that her depression caused her to suffer from a lack of ability to concentrate, and that this posed a judgment problem. He stated that by the end of 2000, through psychotherapy sessions and use of some psychoactive medications, these symptoms were diminishing. Tr. at 23. With continuing improvement in her condition, she gradually reduced her use of medications beginning in June 2002, and since June 2003, she has not used any psychoactive medications. Tr. at 27. He indicated that as of June 2003, the individual's depression had been in full remission for some time. Tr. 30.

The therapist testified about the individual's arrest in 2000 for disorderly conduct. He stated that part of treating depression includes teaching a patient self-assertiveness. He believed that the individual was attempting to practice some of the assertiveness skills that she had been discussing in therapy, but was misinterpreted by the police. He stated that she called him immediately, and they spent some extra time to talk about this event and the issues it raised. He attributed the incident to an unfortunate misunderstanding, and not to any serious mental defect of the individual. Tr. at 13-15.

He believed that by June 2002, the time of the DOE consultant psychiatrist's evaluation, the individual had made considerable progress, and was no longer depressed. He commented on the DOE consultant psychiatrist's evaluation that the individual was suffering from a depressive disorder in June 2002. He noted that the individual's mother-in-law, with whom the individual had a very close relationship, had passed away in April 2002. The therapist testified that symptoms such as appetite loss, and sleep disturbance, which could have given the DOE consultant psychiatrist

reason to believe that the individual was depressed, were better explained by bereavement. Tr. at 23-26.

The therapist was confident that in the event that the individual did experience feelings of hopelessness and sadness in the future, she would know how to cope with them and whom to call. He believed that she was familiar with the symptoms of depression and had an established network of professionals to help her. Tr. at 44-45. Overall, the therapist believed that the individual had achieved a remarkable improvement. He thought she was successful "because it's just characteristic of [her] to makeup her mind . . . to work on herself. . . . Her determination has really pulled her through this." Tr. at 39.

2. The DOE Consultant Psychiatrist

As stated above, the DOE consultant psychiatrist evaluated the individual in June 2002. This witness testified that at that time, there were still some signs that individual was suffering from depression. Tr. at 54. Based on the testimony regarding the individual's sustained improvement and her serious commitment to therapy for depression, the DOE psychiatrist was convinced that as of the time of the hearing, the depression was in remission. She testified that as of the time of the hearing, the individual had mitigated the Criterion H security concerns referred to above. Tr. at 61.

3. The Plant Psychologist

This witness indicated that he first became aware of the individual's depression in February 2000, and began monitoring her condition from that time. There were follow up meetings with her or reviews of her status in June 2000; January, July, November and December of 2001; and in January 2002 and July 2002. This psychologist testified that after the July 2002 review, he believed that the individual had resolved the depression concerns, and he was in favor of restoring her to her PAP position. However, he stated that by that time the DOE psychiatrist had already voiced her security concerns, and the Part 708 administrative review process had commenced. Therefore, his recommendation was not followed. Nevertheless, he testified that as of July 2002, he believed that clinically, "she was doing very well." He stated that the testimony of the individual's therapist reenforced his own belief that the individual has resolved her depression and is ready to return to a PAP position. Tr. at 69-71.

4. The Individual

The individual does not dispute that she was depressed in 1999-2000. With respect to her arrest for disorderly conduct, she stated that she was trying to have the police pay attention to her in the context of what she considered a private family dispute. After the incident she immediately recognized that she needed some additional help, and called her therapist. Tr. at 74-78.

She indicated that she began to see significant improvement in her mental condition in 2001 and that there has been continuing improvement since that time. She stated that she also feels better now that she is no longer taking any psychoactive medications. She reports that she no longer has feelings of helplessness, tearfulness or sleeplessness. Her appetite has returned to normal. She believes that through therapy, her marriage is stronger and her overall quality of life has improved. Tr. at 81-85. The individual is committed to seeking immediate help if her symptoms of depression return. Tr. at 88. As the individual stated: "Whatever it takes for me to be healthy--I'll do it." Tr. at 89.

5. The Individual's Husband

The individual's husband testified that he is committed to his wife's happiness and making their marriage work. He supports her return to work at the plant. He confirms that he has not seen any signs of depression in her for "a few years." He believes that she is eating and sleeping normally.

6. The Individual's Daughter

The individual's daughter indicated that she was aware of her mother's depression in 1999-2000. She confirmed that her mother has made positive changes in her life since then. She believes that her mother's marriage is stronger. She has seen no symptoms of depression recently. She confirms that her mother has good energy levels and believes her mother to be happy. Tr. at 108-111.

7. The Individual's Friend

This witness has known the individual for about 20 years as both a friend and colleague. At this time, she sees the individual about once a week for lunch. She confirms that the individual's outlook has improved and believes that the individual has good judgment and is trustworthy. Tr. at 114-122.

B. Documentary Evidence

As indicated above, immediately prior to the hearing, the individual sought an evaluation of a psychiatrist. This psychiatrist evaluated the individual during two meetings and wrote a report of her findings. The individual submitted a copy of that report into evidence at the hearing. The report reviews the individual's history of depression. The overall finding of the psychiatrist was that the individual's major depression is in full remission and has been so since before July 2003.

The individual also submitted a number of letters from co-workers, and supervisors, attesting to her superior performance at work.

IV. Regulatory Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security

Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

V. Analysis

The issue in this case is whether the individual is presently suffering from depression, and if so, is it causing or may it cause a defect in her judgment or reliability.

There is no question that the individual has suffered from depression. The experts and the individual all agree on this point. However, as indicated by the testimony above, the experts also agree that the depression is currently in remission. This is attributable to the efforts of the individual herself. She has received therapy, which by all accounts she has taken very seriously. Her therapist believes that her depression is currently in remission and has been in remission for several years. The DOE consultant psychiatrist believes that concerns surrounding the individual's depression are at this time mitigated. The plant psychologist believes that she is no longer suffering from depression and is confident that she is ready to return to work in the PAP program. The individual's psychiatrist, from whom she sought an evaluation just prior to the hearing, also agreed that the individual is no longer depressed. Thus, the mental health professionals involved in this case are in agreement that the individual's depression is in full remission. With the exception of the DOE consultant psychiatrist, they also believe that the remission has lasted for more than one year.

I also found the testimony of the individual herself very persuasive on the issue of the steps she has taken to mitigate the security concerns. I am convinced that her marriage and her life as a whole are much more stable. I am also persuaded that she has learned many coping skills from her therapy, and that she would know how to cope with a future depression incident, should one occur. She testified credibly that she would immediately seek the help of her team of specialists, including her therapist, the psychiatrist and her internist. I therefore believe that the DOE consultant psychiatrist's concern that the individual may have a recurrent episode of depression has been adequately addressed. 4/

4/ The DOE consultant psychiatrist believed that due to the possibility of a recurrent episode of depression, the individual should continue to receive maintenance counseling for two years. Tr. at 61. The individual's
(continued...)

Overall, I was very impressed with the individual's earnest, sustained and obviously successful approach to improving her health, her marriage and her life as a whole. This commitment persuades me that for this individual, depression is unlikely to create a Criterion H security concern in the future. 5/

VI. CONCLUSION

Based on the foregoing, I find that the individual has mitigated the Criterion H security concern cited in the Notification Letter. It is my conclusion that the individual's access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: March 11, 2004

4/ (...continued)
therapist is also in favor of continued counseling, although he did not specify a duration period. Tr. at 37. It is clear that the individual is continuing to receive counseling at this time. Tr. at 12. As discussed in the text, I am confident that the individual will seek help if her depression symptoms return. I therefore do not find any reason to be concerned about this rather minor unresolved point regarding the length of continuing therapy necessary for this individual.

5/ I do not believe that the April 2000 disorderly conduct event referred to in the Notification Letter presents a current security concern. First, I am convinced that this was a single, unusual incident in which the individual overreacted during a very early stage of her therapy. She has learned a lot since that time. I see no reason to believe that the event, which took place four years ago, gives rise to any security concerns at this point.