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January 13, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: August 21, 2002
Case Number: VSO-0572

This Decision addresses the eligibility of XXXXXXX (the Individual) for access authorization, pursuant to the regulations at 10 C.F.R. Part 710. The Individual formerly held access authorization at a Department of Energy (DOE) facility. The facility manager suspended the Individual's access authorization after receiving information that the Individual suffers from a mental condition. As explained below, I find that the Individual's access authorization should be restored.

BACKGROUND

A year before the hearing, the Individual was involved in a one-vehicle accident, damaging his car when he drove it off the road and into a field. A policeman who responded to the scene administered a Breathalyzer test and found that the Individual was intoxicated. The Individual was arrested and pled guilty to a charge of driving under the influence of alcohol (DUI). He was sentenced to five days in jail, had his driver's license suspended, and was ordered to attend a court-sponsored alcohol education program. 1/

The Individual reported the arrest to the facility's personnel security office, which referred the Individual to a DOE contract

1/ The Individual successfully completed the ten-week education program. Report of Individual's psychiatrist.

psychiatrist for an evaluation. The consulting psychiatrist diagnosed the Individual as suffering from Borderline Personality Disorder (BPD), a mental condition that, in the opinion of the consulting psychiatrist, causes, or may cause, a significant defect in his judgment or reliability, as set forth at 10 C.F.R. 710.8(h). 2/

Since the consulting psychiatrist's impressions of the Individual during the examination comprise an important factor in his diagnosis, I will quote at length from the report of the examination:

[The Individual] was able to describe, in a somewhat rambling and disjointed fashion, the events of [the arrest for DUI].... I also note that he has a history of five arrests for speeding. 3/ On further questioning, [the Individual] is extremely evasive and vague about his recollection of the speeding arrests....

[The Individual] notes that his current wife has also had numerous stresses recently, and therefore he is hesitant to burden her with any more difficulties. I sense that there is increasing stress in this marriage, although I am not certain.

[The Individual] goes into great detail describing his ex-wife's difficulties, and blames that for stress in his current marriage. He has had numerous job changes over the last several years, and I was unable to follow his explanations of the exact sequence of job changes....

2/ The consulting psychiatrist based his diagnosis on the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition (DSM-IV). The DSM-IV describes BPD as "a pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity." In his report of the examination, he further stated that he found insufficient evidence to support a diagnosis of an alcohol-related disorder.

3/ Four of the speeding tickets were incurred from 1988-94, and the fifth in 2000.

Throughout the interview, [the Individual] had difficulty coherently organizing thoughts, was frequently distracted, and quite apprehensive.... He denies that he has a temper problem, but I noticed several times of escalating tension whenever I would mildly challenge his statements. [He] repeatedly was tangential in describing events, and often seemed to have derailment of thought processes. He frequently would revert to moralizing and generalizing about behavior for his children, blaming his ex-wife, or other events instead of dealing with the question. This relates to other reports, in which he was noted to have poor concentration, poor teamwork abilities, and often did not appear to be following directions.... He assumed the [court ordered alcohol education] classes were "a test" for him, to see if he really had a drinking problem. This indicates suspiciousness, and difficulty with trust relationships.

I do believe [the Individual] suffers from Borderline Personality Disorder.... The features of this disorder are that he has significant difficulty with unstable and intense personal relationships, has disturbances of identity and self image, experiences considerable affective instability and reactivity of mood, and has occasional stress related paranoid ideation and disassociative symptoms. These symptoms can cause significant defects in judgment and reliability. 4/

Based on the psychiatrist's report, the manager of the facility issued a Notification Letter to the Individual. The letter stated that the Individual's access authorization was suspended because of information indicating that the Individual had "an illness or mental condition of a nature which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in judgment or reliability, within the meaning of paragraph (h), Section 710.8, of 10 C.F.R., Part 710." As a basis for this charge, the letter cited the report of the consulting psychiatrist. The Individual requested a hearing on his eligibility for access authorization, and I was appointed hearing officer.

4/ Report of consulting psychiatrist.

HEARING TESTIMONY

At the hearing, the DOE presented the testimony of a personnel security specialist and the consulting psychiatrist. The Individual presented the testimony of a psychiatrist, a licensed clinical social worker, a supervisor from a former job, a former neighbor, and six supervisors or coworkers from the facility.

The Individual's Psychiatrist

The Individual's psychiatrist stated that he believed the consulting psychiatrist's diagnosis of BPD was incorrect. Shortly before the hearing, the Individual's psychiatrist interviewed the Individual for two hours and spent another hour and a half reviewing notes and records that had been given to him. 5/ He also administered a battery of psychological tests. 6/ He concluded from the interview and testing that the Individual did not suffer from BPD. The only characteristic of BPD that the Individual's psychiatrist noted was some impulsivity in the Individual's dealings with his ex-wife, but he found there was no evidence of unstable relationships with other people, as he believed would be expected of someone with BPD. 7/

The Individual's psychiatrist was asked about two comments in the background investigation file that were made by former employers of the Individual. 8/ One former employer stated that the Individual did not communicate with other team members and progressed slowly in his job, lacking focus due to problems in his life. Another stated that the Individual was working at only fifty percent of his capabilities, and that he was upset with his ex-wife and issues regarding the custody of their

5/ Tr., at 85.

6/ Tr., at 87.

7/ Tr., at 88.

8/ The Individual's psychiatrist was not aware of these comments when he examined the Individual. The consulting psychiatrist cited these statements as evidence that the Individual had BPD.

children. 9/ The Individual's psychiatrist stated that these comments were not necessarily indicative of BPD. 10/ He believed that these comments were best explained as showing a relationship dysfunction between the Individual and his ex-wife, and not BPD. 11/

The Individual's social worker

The social worker is a licensed clinical social worker. 12/ He works with the facility's Employee Assistance Program (EAP). 13/ When the Individual was referred to the EAP following his DUI, the social worker saw him for six sessions of at least one hour each. 14/ In addition, he spoke with the Individual's supervisor and Human Resources manager, and was told that the Individual got along very well with his coworkers. 15/

The social worker disagreed with the consulting psychiatrist's diagnosis of BPD. 16/ He testified that he did detect some generalizing, moralizing, and tangential thought processes. He felt, however, that these traits were not indicative of BPD but were the result of the Individual's anxiety. 17/ He also testified that those borderline traits that were exhibited by the Individual were not pervasive aspects of his personality, as required by the DSM-IV for the diagnosis of BPD, but were related to his problems with his ex-wife. 18/

9/ Tr., at 90.

10/ Tr., at 89.

11/ Tr., at 90.

12/ Tr., at 181-2.

13/ Tr., at 181.

14/ Tr., at 184-5.

15/ Tr., at 189.

16/ Tr., at 183.

17/ Tr., at 191-2.

18/ Tr., at 209-10.

The social worker stated that he was familiar with borderline behavior, having worked in crisis intervention and in a hospital emergency rooms. 19/ He testified that someone who met the criteria for BPD would have difficulty holding a job. 20/ He stated that typically, someone with BPD who was teased or blamed for a work problem would have an extreme, volatile response. 21/

The social worker testified that he believed the consulting psychiatrist had insufficient data to make a diagnosis of BPD. He stated that "to make a personality disorder diagnosis ... it is best to have as much information as possible ... including psychological testing ... [and] at least more than one evaluation."

The Individual's character witnesses

At the hearing, the Individual provided the testimony of seven witnesses who were familiar with his behavior at work. These witnesses included his first and second level supervisors, a supervisor in another section that worked closely with the Individual, three coworkers, and a supervisor from a previous job. They each knew the Individual for about three years. Each of them described the Individual as a hard worker who got along very well with his coworkers and who took criticism and correction well. Each testified that he had never seen the Individual lose emotional control or behave inappropriately on the job. Two specific incidents reported by the Individual's coworkers are particularly relevant to borderline personality. In one incident, the Individual was given a demeaning nickname by another worker. Testimony indicated that the Individual never showed anger when he was called by this nickname, but instead laughed and went on working. 22/ In another incident, the Individual was accused of setting some equipment in the

19/ Tr., at 205, 208.

20/ Tr., at 206.

21/ Tr., at 208-09.

22/ Tr., at 107, 111, 115-17, 121-22, 164-65.

wrong place. Testimony again indicated that the Individual dealt with the supervisor's criticism pleasantly. 23/

In addition, the Individual's neighbor testified. He stated that he had known the Individual for two years and considered him to be a close friend. He testified that he had never seen the Individual inappropriately angry. 24/

The consulting psychiatrist

The consulting psychiatrist testified about the basis of his diagnosis, essentially restating his findings from his report. After listening to the testimony of the Individual's psychiatrist, social worker, and character witnesses, he stated that his opinion about the Individual was unchanged. He stated that the Individual's psychiatrist was unaware of the Individual's five speeding tickets, which might account for some of their differences. As for their different conclusions about the Individual, he stated that "the other matters are matters of judgment.... I ... don't have a clear rebuttal. It's just a matter of ... opinion." 25/

The consulting psychiatrist testified that it is possible for someone to have a diagnosed personality disorder that is not sufficient to cause a defect in judgment or reliability. 26/ He stated, however, that he believed BPD had caused a significant defect in the Individual's judgment and reliability. He testified that the Individual's "lack of attention, lack of focus that one of the employers noted [in the background investigation] ... could pose significant problems as far as attention to security matters." 27/

The consulting psychiatrist testified about the favorable testimony given by the Individual's character witnesses. He stated that the Individual's pleasant, easy-going demeanor is a

23/ Tr., at 122.

24/ Tr., at 122, 145.

25/ Tr., at 247.

26/ Tr., at 240.

27/ Tr., at 251.

form of psychological manipulation to convince people that he was a good person. He felt the character witnesses' testimony did not deal with the depth of personality functions, and how the Individual behaved under stress. 28/

The Individual

The Individual stated that his relationship with his ex-wife had caused him a great deal of turmoil. On the night of his DUI, he stated that he and his ex-wife had an argument, during which she threatened to reveal some sensitive personal information to one of the children. He also testified that his speeding tickets were related to problems he was having with his ex-wife. 29/

ANALYSIS

A DOE administrative review proceeding under Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In a Part 710 case, the standard is designed to protect national security interests. Once the DOE has made a showing of derogatory information, the burden is on the individual to convince the DOE that 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. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the interests of national security" standard for the granting of security clearances indicates that 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).

As the hearing officer, my task is to render "a comprehensive, common-sense judgment, made after consideration of all relevant information ... as to whether the granting or continuation of access authorization will not endanger the common defense and

28/ Tr., at 262.

29/ Tr., at 333-34.

security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In a case such as this, where expert witnesses disagree on the Individual's diagnosis, I am not required to determine which of the diagnoses is correct. I must look, rather, at the totality of the evidence, whether expert or not, and determine if the Individual meets the standards required for holding access authorization.

The Individual's eligibility was suspended because he was diagnosed with "an illness or mental condition of a nature which ... causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). A determination under this criterion, therefore, must take into consideration not only whether the individual has a diagnosed mental condition, but also the condition's effect on his judgment and reliability. A case that clearly illustrates this principle is *Personnel Security Hearing*, Case No. VSO-0467 (Jan. 21, 2002), *affirmed by OSA* (May 23, 2002). In that case, the individual suffered from an acknowledged bipolar disorder. He had been hospitalized in 1991 for either a manic or hypomanic episode, and had experienced at least two hypomanic episodes since then. His most recent hypomanic episode had occurred a year before the hearing, during which he received two speeding tickets and "noticeably agitated his spouse." The hearing officer agreed with the individual's treating psychiatrist that the results of these episodes - notably mood disturbances and difficulty concentrating - were "mild impairments" rather than significant defects. On the basis of this finding and other evidence in the record, the individual's access authorization was restored.

Turning to the present case, I find that the crux of the consulting psychiatrist's findings is that the Individual's BPD causes a lack of focus and attention that could lead to serious inattention to security matters. ^{30/} I will look at two aspects in determining whether the Individual has, or may have, a significant defect in judgment or reliability. The first aspect is the severity of the Individual's BPD symptoms. As noted above, the DSM-IV requires an individual to meet five of nine specified criteria to sustain a diagnosis of BPD. The consulting psychiatrist found that the Individual met five

^{30/} Tr., at 251.

criteria. 31/ The Individual's psychiatrist found that the Individual had shown signs of one criterion, and the clinical social worker found "some traits" of BPD that were not sufficiently pervasive to justify a diagnosis of the disorder.

In summary, the expert opinion ranges from finding that the Individual has shown the minimum criteria of BPD to finding that he has manifested some traits of BPD without having the condition. I conclude therefore that the Individual has at least some traits of BPD and at most a mild level of BPD.

As noted above, the consulting based his diagnosis of BPD on his belief that the Individual met five criteria of the disorder listed in the DSM-IV. The consulting psychiatrist gave examples of the Individual's behavior that he felt justified his the finding of each criterion. I will now examine the evidence brought forth by the consulting psychiatrist for each criterion that he felt the Individual had met. In examining these criteria, my concern is not whether the diagnosis of BPD is correct, but whether the Individual's behavior as cited by the consulting psychiatrist shows a significant defect in judgment or reliability.

1. Impulsivity. The consulting psychiatrist found that the Individual's five speeding tickets and one incident of driving while intoxicated indicated impulsivity. The Individual's psychiatrist agreed that the Individual's driving record indicated impulsivity in the past, but saw no evidence that impulsivity was a continuing problem. He noted in his report that the Individual "maintains, convincingly, that he has learned much from these two arrests [i.e., the last speeding ticket and the DUI arrest] and is very careful to follow all relevant highway laws at this point in his life." 32/ He further notes that the Individual's DUI does not represent a pattern of behavior, but occurred when the Individual was in the midst of a child custody battle and was responding, unconstructively, to the stress. This view is supported by the report of the social worker, who stated that the Individual would benefit from developing alternative strategies for dealing with stress. Moreover, testimony from the Individual's coworkers indicated that the Individual was not prone to impulsive behavior.
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31/ Tr., at 240.

32/ Report of Individual's psychiatrist.

therefore conclude that the Individual's impulsivity is a mild impairment resulting from his inability to deal with occasional high stress, but does not indicate a significant defect in judgment or reliability.

2. Significant difficulty with unstable and intense interpersonal relationships. The consulting psychiatrist found the Individual's difficulties with his ex-wife and some of his previous employers indicated problems with interpersonal relationships. There is no dispute that the Individual's relations with his wife have been problematic. In addition, the records of two interviews in the background investigation file indicate that the Individual had difficulties getting along with his supervisors at two previous jobs.

However, there is also ample evidence that the Individual has successfully maintained stable personal relationships. For example, he has been married to his second wife for seven years. The Individual's psychiatrist observed in his report that the Individual "spoke of his love for [his second wife], their mutual dedication, and their mutual supportiveness. He spoke of his feelings about her disability, which showed interpersonal sensitivity and empathy." The testimony of the Individual's former supervisor, and letters from former employers that the Individual produced at the hearing, indicates that, overall, the Individual has not had problems with employers or coworkers. In addition, the testimony of the Individual's supervisor and co-workers indicated that in the most recent period, he has maintained good on-the-job interpersonal relationships. 33/

The consulting psychiatrist described the Individual's ability to maintain good relationships on the job as a "mask" that hides his BPD. If the consulting psychiatrist is correct, then based on this description and all other evidence in the record I conclude that the Individual is able to recognize what would be inappropriate behavior and has successfully been able to control

33/ There was testimony from his coworkers that the Individual had difficulty in learning certain mechanical operations. I believe the Individual's learning difficulty provides a reason for the negative comments in the background investigation. The consulting psychiatrist acknowledged that a cognitive or learning disability was a possible cause for the negative comments from the former employers. Tr., at 263.

his behavior within appropriate bounds during at least the past three years. I therefore find that the Individual's conduct in interpersonal relationships does not indicate a current significant defect in judgment or reliability.

3. Identity disturbances and markedly persistent, unstable self-image, or sense of self. As evidence of this criterion, the consulting psychiatrist identified the Individual's presentation style in the two interviews he had conducted with the Individual. The consulting psychiatrist described this presentation style as being "marked by difficulty in expressing a logical progression of events and vague, circumstantial, and wandering explanations."

The Individual's psychiatrist noted that the Individual "did display a tendency to have a strong preference for focusing on detail and to completing his thoughts. If I would interrupt him before completion of thought, he would insist on returning to his earlier uncompleted thought in order to finish it." However, he also noted that the Individual was not tangential and concentrated well on the questions at hand.

I have had the occasion to converse with the Individual during several long telephone conferences and an all-day hearing. I had an impression of the Individual's speaking style similar to the impression of the Individual's psychiatrist. The Individual has a tendency to return to a subject until it had been discussed to his satisfaction. This tendency can result in a disjointed flow in the conversation. However, I also observed that the Individual had no difficulty in understanding the logical concepts in this proceeding. He prepared his own questions and arguments for the hearing and, while the Individual is not a polished speaker, I had no difficulty following the logical progression of his thoughts. In addition, I found no indication during this proceeding that the Individual had problems with focus and attention. I conclude that the Individual's presentation style does not indicate a significant defect in judgment or reliability.

4. Instability and mood swings. The consulting psychiatrist found this criterion was evidenced by the Individual's anger with his ex-wife, which led to his DUI arrest. In contrast to the anger shown in this episode, however, the Individual's psychiatrist noted that the Individual "conducted himself in a very gentlemanly manner the entire hour and a half-long interview, even when challenged or questioned." I also found

that the Individual maintained a polite and composed manner throughout the pre-hearing conferences and the hearing. In addition, the Individual's supervisor and coworkers all described him as emotionally stable and good-natured. I conclude that, while the Individual may have had difficulty in communicating with the consulting psychiatrist, the limited amount of evidence of instability and mood swings cited by the consulting psychiatrist does not indicate a significant defect in judgment or reliability.

5. Stress-related paranoid ideation and disassociative events. As evidence for this criterion, the consulting psychiatrist noted that when he asked the Individual about a court-ordered alcohol education program he attended after his DUI, the Individual said that the purpose of the program was to "test" him. At the hearing, the Individual testified that he described the program as a test because he was given a blood-alcohol test each week.

Evidence of paranoid ideation is limited to this single remark during the consulting psychiatrist's examination. On the other hand, the Individual's psychiatrist reported that the Individual "did not display evidence of irrational suspicion or paranoia." I conclude that this single remark of the Individual does not indicate a significant defect in judgment or reliability.

CONCLUSION

As the consulting psychiatrist testified, a person can suffer from a personality disorder and yet not have a significant defect in judgment or reliability. Thus, my interest in this case is not whether the Individual suffers from BPD, as the consulting psychiatrist believes, or merely has some borderline traits, as the Individual's psychiatrist and social worker believe. My concern rather is whether the behavior that the consulting psychiatrist identified as evidence of BPD indicates a significant defect in the Individual's judgment or reliability.

I find that the Individual has provided convincing evidence, through the testimony of his psychiatrist, social worker, supervisor, and coworkers, that he does not have a significant defect in judgment or reliability. The evidence shows that while the Individual has had difficulties in dealing with his ex-wife and in communicating with the consulting psychiatrist,

and that these difficulties may be indicative of borderline behavior, the Individual has been functioning well during the last three years and does not have a significant defect in judgment or reliability. Furthermore, the testimony of the Individual's psychiatrist and social worker has convinced me that the borderline traits he exhibits are relatively mild and that there is little probability that the Individual will demonstrate a significant defect in judgment or reliability in the future.

I conclude that the Individual has resolved the security concerns identified by the DOE under 10 C.F.R. § 710.8(h). In view of the record before me, I am persuaded that granting the individual access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." Accordingly, I find that the Individual should be granted access authorization.

Warren M. Gray
Hearing Officer
Office of Hearings and Appeals

Date: January 13, 2003