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July 9, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 12, 2006

Case Number: TSO-0446

This Decision concerns the eligibility of XXXX X. XXXXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled ACriteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.@[1] A local Department of Energy Security Office (LSO) determined that derogatory information concerning the Individual's eligibility for an access authorization could not be resolved under the provisions of Part 710. For the reasons stated below, I find that the Individual's access authorization should not be restored.

I. BACKGROUND

The present proceeding involves an Individual who has been diagnosed with Obsessive Compulsive Personality Disorder (OCPD) by a DOE Sponsored Board Certified Psychiatrist (the DOE Psychiatrist). The Individual contests this diagnosis and does not believe that he has any mental condition that should affect his eligibility for an access authorization.

The Individual has served in an extremely sensitive position at a DOE facility.[2] The Individual's position requires that he be subject to the DOE's Human Reliability Program (HRP). Individuals who are subject to the HRP undergo routine evaluation of their physical and mental well-being in order to ensure their reliability. Under the HRP, the Individual was required to undergo two psychological screening tests known as the Minnesota Multiphasic Personality Inventory-II (MMPI-II) and the Millon Clinical Multiaxial Inventory-II (MCMI-II). On April 18, 2005, as part of his annual HRP physical, the Individual was administered the MMPI-II. The April 18, 2005 MMPI-II results were consistent with a diagnosis of Schizoid Personality Disorder. In addition, a clinical interview of the Individual was conducted by an HRP mental health professional. This clinical interview raised further concerns about the Individual's mental health. DOE Exhibit 20 at 2. Accordingly, the mental health and medical professionals working for the HRP suspended the Individual's HRP clearance on a temporary basis in order to further assess

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[1] An Aaccess authorization@ is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. ' 710.5.

[2] Because the Individual's access authorization has been suspended, the Individual has been detailed to a less sensitive position pending resolution of the present matter.

the Individual.

On April 20, 2005, the Individual provided the HRP mental health professionals with his medical records from the local Veterans Administration (VA) clinic and a counselor (from whom the Individual and his wife had been receiving counseling services the Christian Counselor). The medical records from the VA indicated that the Individual had been evaluated and treated for depression, anxiety, and a personality disorder (not otherwise specified).[3] DOE Exhibit 24 at 5-8.

On May 9, 2005, a HRP Review meeting was conducted. The official record of that meeting indicates that this meeting was called to discuss concerns about "Psychological testing suggestive of depression and personality disorder" raised by the Individual's prescription Zoloft use, the results of the April 18, 2005 MMPI-II and MCMI-II, the clinical interview, and the Individual's alleged use of over 100 hours of sick leave annually. DOE Exhibit 38 at 3-5. As a result of this meeting, the HRP officials concluded that the Individual would be referred to a HRP Contract Psychiatrist (the HRP Psychiatrist) for a psychiatric evaluation. DOE Exhibit 38 at 4.

On May 20, 2005, the Individual was evaluated by the HRP Psychiatrist. DOE Exhibit 38 at 10. The HRP Psychiatrist issued a report in which she stated that she had diagnosed the Individual with Dysthymia and Schizoid Personality Disorder. DOE Exhibit 38 at 14-15. The HRP Psychiatrist also indicated that the Individual has a "probable Attention Deficit Disorder, which needs to be more thoroughly investigated." DOE Exhibit 38 at 15.

On August 1, 2005, another HRP Program Review meeting was conducted. DOE Exhibit 38 at 7. The official record of that meeting indicates that this meeting was called as a follow-up to the May 9, 2005 HRP Program Review meeting to discuss the Individual's legal Zoloft use, the results of the April 18, 2005 MMPI-II, MCMI-II, and the HRP Psychiatrist's findings. DOE Exhibit 38 at 7. The official record of this meeting indicates that the Individual "voiced concerns

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[3] Apparently, the HRP had not previously obtained these medical records from the VA even though the Individual had been subject to the HRP since November 2002. The Medical Records from the VA revealed that the mental health professionals at the VA had had serious concerns about the Individual. The VA Psychiatrist wrote:

> [The Individual] is being followed for depression and for mixed personality [disorder]. . . . [The Individual] says he is not doing well. . . . He complains most of instability of mood. Sometimes he feels relatively well, which for him means he can tolerate other people better and function in his home and job responsibilities without problems. These good periods last a week or two. Then he will have periods of several months when he is very irritable, unable to be satisfied with anything. During these times he will become obsessive about cleanliness and this irritates his family. He will also have interpersonal problems and has lost jobs and gotten divorced during these 'bad' periods. [The Individual] says his wife complains to him that he has 'no uniformity' of his moods and she never knows what to expect from him. [The Individual] would like to try a different [medication] to 'keep the peace at home.'

DOE Exhibit 24 at 5-6. A VA Psychologist who conducted a neuropsychological evaluation of the Individual diagnosed him with Dysthymia with anxiety and Personality Disorder, Not Otherwise Specified, with schizoid and avoidant tendencies. DOE Exhibit 24 at 8.

about the findings & took issue with a number of statements read from various reports." DOE Exhibit 38 at 8. The HRP officials present at this meeting advised the Individual to "see a psychiatrist of his choosing to follow-up on suggestions from [the HRP Psychiatrist's] clinical findings." DOE Exhibit 38 at 8. The official record notes that the Individual would be re-evaluated by the HRP before November 1, 2005. There is no indication in the record that this re-evaluation occurred. The Individual, however, submitted a copy of the official record of a HRP Program Review meeting conducted on March 29, 2006.

On May 2, 2005 the suspension of the Individual's HRP credentials was reported to DOE's Local Security Office (LSO). On August 19, 2005, the LSO issued a Letter of Interrogatory (LOI) to the Individual requesting information concerning the suspension of the Individual's HRP credential. DOE Exhibit 43 at 1. In a ten-page letter dated September 7, 2005, the Individual provided his response to the questions asked of him in the LOI. In his response to the LOI, the Individual confirmed that he had lost his HRP credential. The Individual's letter also indicated that he did not believe that the HRP process was fair to him. The Individual correctly noted that HRP officials accused him of using over a hundred hours a year of sick leave over a four-year period, when his actual sick leave usage was 56 hours a year during this time period. The Individual also questioned why his use of Zoloft was cited as a concern in the HRP review meetings, when HRP officials had previously indicated that Zoloft use was not a problem. In his response to the LOI, the Individual also expressed his opinion that the HRP Psychiatrist "had her mind made up when I walked in the door." DOE Exhibit 43 at 9. The Individual further questioned the impartiality of the HRP Psychiatrist, stating "there are numerous statements listed in [the HRP Psychiatrist's] report that have been fabricated, misquoted, taken out of context, omitted, and otherwise wrong." DOE Exhibit 43 at 9.

On February 9, 2006, a Personnel Security Interview (PSI) of the Individual was conducted.[4] The PSI did not resolve the security concerns about the Individual's mental health. In order to resolve the security concerns raised by the HRP Psychiatrist's findings, the DOE arranged for the Individual to be examined by the DOE Psychiatrist. The DOE Psychiatrist conducted an extensive review of the Individual's medical and personnel security records. The DOE Psychiatrist also conducted a forensic psychiatric examination of the Individual. After conducting his review of these records and his examination of the Individual, the DOE Psychiatrist concluded that the Individual met the criteria for OCPD, with passive-aggressive, schizoid, avoidant and narcissistic traits, as set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition Text Revision (DSM-IV TR). DOE Exhibit 17 at 34. The DOE Psychiatrist further opined that this disorder causes, or may cause, a significant defect in judgment or reliability. DOE Exhibit 17 at 34-35. As a result, the Individual's access authorization was placed in administrative review and the present proceeding was commenced. On August 22, 2006, the DOE issued a letter notifying the Individual that the DOE possessed derogatory information that created a substantial doubt concerning his eligibility for access authorization (the Notification Letter). Specifically, the Notification Letter states that the Individual "has an illness or mental condition of a nature which, in the opinion of a

[4] A previous PSI of the Individual had been conducted on August 21, 2002, which appears in the record as DOE Exhibit 47.

psychiatrist, causes, or may cause, a significant defect in his judgment or reliability.@ Notification Letter, Attachment at 1.

In response to the Notification Letter, the Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called one witness: the DOE Psychiatrist. The Individual called five witnesses: a psychiatrist and three coworkers and his present supervisor. The Individual also testified on his own behalf. The record of this proceeding was closed on June 22, 2007, when OHA received additional information requested by the Hearing Officer.

II. 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). Part 710 generally provides

> [t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of 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). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the concern; the circumstances surrounding the concern, including knowledgeable participation; the frequency and recency of the concern; the Individual's age and maturity at the time of the concern; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the concern, 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.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. ' 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization Awould not endanger the common defense and security and would be clearly consistent with the national interest.@ 10 C.F.R. ' 710.27(d). In the present case, the Record shows that a valid and significant question has been raised about the Individual=s continued eligibility for an access authorization. The Individual has not convinced me that restoring his security clearance would not endanger the common defense and security and would clearly be in the national interest.

III. FINDINGS OF LAW AND FACT

The Individual vigorously disputes the DOE Psychiatrist's opinion that he has OCPD.[5] He just as vigorously disputes the findings of the three other mental healthcare professionals that have diagnosed him with various personality disorders. In support of his assertion that he does not suffer from a personality disorder, the Individual has attempted to show that: (1) the DOE Psychiatrist's opinion that the Individual has OCPD is flawed and cannot be relied upon, (2) four mental healthcare professionals have concluded that the Individual does not have any personality disorder, (3) the HRP process was rigged against him, and (4) his distinguished military record and excellent performance at his current job indicate that there is no defect in his judgment and reliability.

After reading the DOE Psychiatrist's report, which appears in the record as DOE Exhibit 17, as well as hearing her testimony and after considering all of the evidence in the record, I am convinced that the DOE Psychiatrist correctly diagnosed the Individual with OCPD. The DSM-IV TR sets forth the following General Diagnostic Criteria for a Personality Disorder:

> A. An enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture. The pattern is manifested in two (or more) of the following areas:
> (1) cognition (i.e., ways of perceiving and interpreting self, other people, and events)affectivity (i.e., the range, intensity, lability, and appropriateness of emotional response)
> (2) interpersonal functioning
> (3) impulse control
> B. The enduring pattern is inflexible and persuasive across a broad range of personal and social situations.
> C. The enduring pattern leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning.
> D. The pattern is stable and of long duration, and its onset can be traced back at least to adolescence or early adulthood.
> E. The enduring pattern is not better accounted for as a manifestation or consequence of another mental disorder.
> F. The enduring pattern is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition (e.g., head trauma).

DSM-IV-TR at 689. The DSM-IV-TR sets forth the following definition of Obsessive

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[5] The DOE Psychiatrist and other mental health professionals have also diagnosed the Individual with Dysthymia, a relatively mild form of depression, which, in the opinion of the DOE Psychiatrist, is not likely to cause a defect in the Individual's judgment or reliability. Several health care professionals who have examined the Individual have expressed concerns that the Individual may have Attention Deficit Disorder (ADD) and/or a Learning Disability. Those mental health professionals, including the DOE Psychiatrist, agree that it would be inappropriate to diagnosis the Individual with ADD without extensive further testing. Accordingly, the only issues before me are whether the Individual has a Personality Disorder and, if so, whether that personality disorder causes or may cause a defect in the Individual's judgment or reliability.

Compulsive Personality Disorder:

A pervasive pattern of preoccupation with orderliness, perfectionism, and mental and interpersonal control, at the expense of flexibility, openness, and efficiency, beginning by early adulthood and present in a number of contexts, as indicated by four (or more) of the following:

1. is preoccupied with details, rules, lists, order, organization, or schedules to the extent that the major point of the activity is lost

2. shows perfectionism that interferes with task completion (e.g., is unable to complete a project because his or her own overly strict standards are not met)

3. is excessively devoted to work and productivity to the exclusion of leisure activities and friendships (not accounted for by obvious economic necessity)

4. is overconscientious, scrupulous, and inflexible about matters of morality, ethics, or values (not accounted for by cultural or religious identification)

5. is unable to discard worn-out or worthless objects even when they have no sentimental value

6. is reluctant to delegate tasks or to work with others unless they submit to exactly his or her way of doing things

7. adopts a miserly spending style toward both self and others; money is viewed as something to be hoarded for future catastrophes

8. shows rigidity and stubbornness

DSM-IV-TR at 729. The DOE Psychiatrist testified that the Individual met seven of these eight traits.[6] Transcript of Hearing (Tr.) at 34. The DOE Psychiatrist testified that the Individual has the first trait: preoccupation with details, rules, lists, order, organization, or schedules to the extent that the major point of the activity is lost. Tr. at 34-35. Specifically, the DOE Psychiatrist testified

> So I think he takes pride that he is quite a perfectionistic individual. But also, in his own words, there are times that he gets very stubborn . . . and that's when, I believe, it gets maladaptive. If perfectionism gets so stubborn that you actually could not even see others' opinions or points of view, then it interferes with your ability to relate to others harmoniously. And in this particular instance, I think what happened was that there is a lot of that amount of that rigidity and perfectionism that explained how he had responded to the psychiatric evaluations, for example, and to being scrutinized in his work environment, as well.

[6] The DOE Psychiatrist later testified that she agreed that the Individual did not actually have one of the diagnostic traits she had originally identified in the Individual, thus reducing the number of diagnostic traits identified in the Individual by the DOE Psychiatrist to six.

Tr. at 35. The DOE Psychiatrist went on to note that the Individual devalued the opinions of each of the psychiatrists that found he had a personality disorder. Tr. at 36. The DOE Psychiatrist noted that the Individual quit taking Zoloft after the first HRP meeting because the HRP officials were citing his Zoloft use as one of the factors that led them to be concerned about his mental health. The DOE Psychiatrist cited this as an example of the Individual's engaging in maladaptive behaviors and exercising poor judgment. Tr. at 38. The DOE Psychiatrist's report notes that her interview of the Individual revealed that "he sometimes had gotten so bogged down in details that he lost track of what he was trying to accomplish." DOE Exhibit 17 at 31. The DOE Psychiatrist's Report further notes that the VA records indicate that the Individual "used to be very compulsive about his closet and his house but has had to give up on his compulsiveness because his wife is very informal, and the kids –does not like living 'that way.'" DOE Exhibit 17 at 31.

The DOE Psychiatrist's Report expressed her opinion that the Individual has the second trait: perfectionism that interferes with task completion. Tr. at 31. Specifically, the DOE Psychiatrist's Report states that her interview of the Individual revealed:

> He had often spent far too much time trying to get little things just right. He admits to being a perfectionist depending on what he is doing. . . . In doing so, it can get to the point that he was unable to get things done perfectly. This had happened at work too. [the Individual stated:] 'I've had bosses that had told me to chill out.' However, he did not feel that he was considerably less effective because of excess perfectionism.

DOE Exhibit 17 at 31.

The DOE Psychiatrist testified that the Individual has the third trait: excessive devotion to work and productivity to the exclusion of leisure activities and fiendships. Specifically, the DOE Psychiatrist testified that the Individual actually admitted to her that this was true. Tr. at 40-42. The DOE Psychiatrist further testified that the Individual had admitted to her that his devotion to work had caused marital distress at one time. Tr. at 42.

The DOE Psychiatrist testified that the Individual has the fourth trait: Being overly conscientious, scrupulous, and inflexible about matters of morality, ethics, or values (not accounted for by cultural or religious identification). Tr. at 42. The DOE Psychiatrist noted that this trait is usually positive, however, the Individual has taken it to a point where it is maladaptive. Tr. at 42-43. Specifically, the DOE Psychiatrist testified that

> But what I actually think was going on with specifically the situation at hand right now is because he was so convinced about what is right, that needs to be done to him by his employer, at the expense of not seeing what actually the rational motive of the employer is for all of these evaluations and this process of this Q clearance or whatever. I think actually that his reaction to this whole process was a result of that his way is the right way and – and that is his belief system. He

> keeps referring to his background. And, you know, I have known many in the military background. I have families who have served, also, in the Gulf war or whatever. I actually do not think that that background is unique to explain his rigidity and inflexibility about what is right in his mind. And that is included in matters of morality, ethics or values.

Tr. at 43.

The DOE Psychiatrist opined in her report that the Individual met the criterion for the fifth trait: an inability to discard worn-out or worthless objects even when they have no sentimental value. However, at the hearing she testified that she no longer is of the opinion that he meets the criterion for this trait. Tr. at 44-46.

The DOE Psychiatrist's Report expressed her opinion that the Individual has the sixth trait: reluctance to delegate tasks or to work with others unless they submit to exactly his or her way of doing things. The DOE Psychiatrist's Report indicates that she asked the Individual if he had often insisted that things be done exactly the way he thinks they should be done, the Individual replied by stating "when I was in the military . . . out in the civilian world, you can't do that. . . It used to upset me. I'm far better now than I used to be." DOE Exhibit 17 at 31-32. The DOE Psychiatrist's Report further notes: "If he knew he was going to bear the grunt, he had a hard time letting other people do things because he was sure that he would do them incorrectly. It was only while he was in the Marine Corps. That he had been told he was very controlling in work situations." DOE Exhibit 17 at 32.

The DOE Psychiatrist Report expressed her opinion that the Individual does not have the seventh trait: a miserly spending style toward both self and others. DOE Exhibit 17 at 32.

The DOE Psychiatrist testified that the Individual met the criterion for the eighth trait: rigidity and stubbornness. Tr. at 35-37. The DOE Psychiatrist's Report notes that the Individual admitted to her that he was generally a very stubborn person and that he had acted as if there were only one right way to do things. DOE Exhibit 17 at 32. The DOE Psychiatrist also noted that the Individual had reported that his wife had told him he was rigid. DOE Exhibit 17 at 32.

Accordingly, the DOE Psychiatrist has opined that the Individual has six of the eight traits that form the criteria for OCPD. Under the DSM-IV TR, only four of these traits need be present to conclude that an Individual has OCPD. DSM-IV-TR at 729. The DOE Psychiatrist's report and testimony are highly persuasive and are well supported by the evidence in the record.

The Individual has submitted reports by four mental health professionals. Each of these mental health professionals opined that the Individual either had no mental disorder or condition or merely suffered from dysthymia. One of these mental health professionals, a psychiatrist hired by the Individual to perform an independent evaluation of his mental health testified on the Individual's behalf at the hearing.

A report from a Christian Counseling Ministry Counselor (the Christian Counselor) appears in the record as DOE Exhibit 32. The Christian Counselor's one-page report indicates that he had provided counseling to the Individual on six occasions. The report indicated that the Individual had been open and receptive to counseling and wished to learn how to overcome his depression and anxiety and to "better deal with his anger." DOE Exhibit 32 at 1. The Christian Counselor further noted that, "though his diagnosis is an adjustment disorder with depression and anxiety, his prognosis is good, because he is motivated to help himself." The Christian Counselor's report indicates that the Individual "wants to earnestly make some healthy changes in his behavior/communication." The report also states, "It is my opinion that [the Individual] has <u>no</u> significant defect in judgment and reliability." DOE Exhibit 32 at 1 (emphasis in the original). Unfortunately, the Christian Counselor did not testify at the hearing, so I am unable to determine what information the Christian Counselor relied upon in reaching his opinion. Moreover, there is no evidence in the record indicating that the Christian Counselor was provided with a copy of the DOE Psychiatrist's report. Thus the evidentiary value of the Christian Counselor's report is greatly weakened.

A report from a physician (the Neuropsychiatrist) who is board certified in both psychiatry and neurology appears in the record as DOE Exhibit 33. The Neuropsychiatrist's report indicates that he performed a comprehensive neuropsychiatric evaluation of the Individual and found that "clearly this gentleman suffers from no major psychiatric diagnosis or neuropsychiatric diagnosis." DOE Exhibit 33 at 2. The report states, "Much of the diagnostic considerations with regard to this gentleman have been made based on again, pencil and paper testing which should never be used to provide a diagnosis and at best should be used only to support a clinical evaluation although, it is not infrequent that pencil and paper testing is inconsistent with clinical neuropsychiatric medical evaluation." DOE Exhibit 33 at 2. Unfortunately, the Neuropsychiatrist did not testify at the Hearing, so I am unable to determine what information the Neuropsychiatrist relied upon is reaching his opinion. Moreover, there is no evidence in the record indicating that the Neuropsychiatrist was provided with a copy of the DOE Psychiatrist's report and found fault with it. Moreover, it is important to note that the DOE Psychiatrist did not solely rely upon "pencil and paper testing" to conclude that the Individual had the six OCPD traits she identified in the Individual. Accordingly, the Neuropsychiatrist's report's evidentiary value is greatly weakened.

A report from a Counselor (the Counselor) to whom the Individual was referred by the Independent Psychiatrist appears in the record as DOE Exhibit 18. The Counselor's one-page report indicates that he had provided counseling to the Individual for six months. DOE Exhibit 18 at 1. The Counselor did not provide a diagnosis of the Individual, nor did the Counselor opine that the Individual did not have OCPD.

The Individual has submitted the both the written report and the testimony of a psychiatrist (the Independent Psychiatrist), who performed a comprehensive, independent examination of the Individual. The Independent Psychiatrist's report appears in the record as DOE Exhibit 34. The report indicates that the Independent Psychiatrist "met with [the Individual] for approximately

(23) hours and reviewed more than 200 pages of documents."[7] DOE Exhibit 34 at 1. The report notes that he had previously been diagnosed with Schizoid Personality Disorder (SPD) and that the Independent Psychiatrist disagrees with that diagnosis. DOE Exhibit 34 at 2-3. In fact, a substantial portion of the Independent Psychiatrist's three-page report is devoted to refuting the SPD and Attention Deficit Disorder diagnoses. The Independent Psychiatrist further opined that the Individual did not currently suffer from any mental illness or condition. DOE Exhibit 34 at 4. The report concludes by opining that the Individual meets the standards of the HRP Program. DOE Exhibit 34 at 4.

At the hearing, the Independent Psychiatrist testified that she did not believe that the Individual had a personality disorder. Tr. at 159-160. However, the Independent Psychiatrist failed to convince me that the Individual does not have OCPD. The Independent Psychiatrist went on to challenge the DOE Psychiatrist's findings of four of the six diagnostic criteria for OCPD that the DOE Psychiatrist had found present in the Individual. As an initial matter, I note that the Independent Psychiatrist did not challenge the DOE Psychiatrist's findings concerning two of the diagnostic criteria for OCPD, specifically the DOE Psychiatrist's finding that the Individual is preoccupied with details, rules, lists, order, organization, or schedules to the extent that the major point of the activity is lost and that the Individual shows perfectionism that interferes with task completion.

The Independent Psychiatrist rather surprisingly indicated that the Individual's social nature contradicted the DOE Psychiatrist's conclusion that the Individual sometimes is excessively devoted to work and productivity to the exclusion of leisure activities and friendships. Tr. at 165. I note that having friends and family and participating in some leisure activities does not contradict the evidence in the record which suggests that, at times, the Individual's devotion to work did cause marital and family distress. DOE Exhibt 17 at 21, 25. Moreover, it is noteworthy that the DSM-IV TR does not require devotion to work to the *complete* exclusion of leisure activities and friendships.

When asked if she disagreed with the DOE Psychiatrist's finding that the Individual is overconscientious, scrupulous, and inflexible about matters of morality, ethics, or values, the Independent Psychiatrist testified "I think that [the Individual] has worked in an environment that he has shown that he has been accommodating to other people's differences in faith,

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[7] At the hearing, the Independent Psychiatrist was cross-examined by the DOE Counsel. The DOE Counsel succeeded in significantly impeaching the credibility of the Independent Psychiatrist. When asked when the 23 hours of evaluation had occurred, the Independent Psychiatrist was unable to recall. Tr. at 198-99. When asked if she had records documenting when she had evaluated the Individual, the Independent Psychiatrist was unable to answer in the affirmative. Tr. at 199. The Independent Psychiatrist then admitted that the 23 hours figure was "an estimate." Tr. at 200. Under further cross-examination, the Independent Psychiatrist claimed that she did not see the part of the VA records indicating that the Individual had been diagnosed with Personality Disorder NOS. Tr. at 201-02. Interestingly, the Independent Psychiatrist was able to recall that the Individual was diagnosed with depression at the VA. Tr. at 203-04. This fact is significant because the VA records contain two mental health professionals' diagnoses of the Individual. Both mental health professionals who diagnosed the Individual diagnosed him with both depression and a mixed personality disorder. DOE Exhibit 24 at 6, 8. The Independent Psychiatrist was unable to recall the last time she saw the Individual. Tr. at 205-206.

ethnicity, but at the same time, I do think that he has a strong sense of right and wrong and is a very moral person." Tr. at 166. This conclusory and somewhat unresponsive answer does not convince me that the DOE Psychiatrist's finding on this criterion was flawed. However, the DOE Psychiatrist has not convinced me that the Individual's strong morals and sense of right and wrong have been maladaptive. Accordingly, I find that the DOE Psychiatrist has not shown that this diagnostic criterion has been met.

When asked if she disagreed with the DOE Psychiatrist's finding that the Individual is reluctant to delegate tasks or to work with others unless they submit to exactly his or her way of doing things, the Independent Psychiatrist correctly noted that many of the Individual's friends, coworkers and former supervisors had described the Individual as a team player. Tr. at 167-68. However, the record clearly shows that the Individual has had a particularly difficult time working with and accepting others who fall short of his admittedly high standards. For example, he was asked to resign at one job in the retail industry because he refused to give a refund to a customer whom he, quite reasonably, suspected of returning merchandise for refunds that had been stolen from the store. The company policy required that he give such a customer the refund. When he was asked by his management if he could comply with this policy in the future, he responded in the negative and was subsequently asked to resign. FBI Report of Investigation at 2, 4. While serving as a police officer, he confronted a fellow police officer who was not pulling her weight and a violent argument ensued which resulted in the police officer filing a grievance against him. Even though the grievance was adjudicated in the Individual's favor, the incident led to ill-will between the Individual and his supervisor. This ill-will led the Individual to leave that police force. DOE Exhibit 46 at 17-21. Accordingly, I find that the DOE Psychiatrist's conclusion that the Individual met the diagnostic criteria for this trait to be persuasive.

When asked if she disagreed with the DOE Psychiatrist's finding that the Individual shows rigidity and stubbornness, the Independent Psychiatrist merely stated "I didn't feel that he did . . . . Just because a person disagrees with a professional, that's no reason to label him with a personality disorder, is it?" Tr. at 168. However, the Independent Psychiatrist had earlier testified that the Individual's military record, which includes a commendation for risking court martial in order to save the life of a fellow marine, specifically shows an actual situation where under extreme stress, the Individual exhibited flexibility rather than rigidity. Tr. at 161-62. The Independent Psychiatrist further testified that the Individual exhibited flexibility during her examinations of him. Tr. at 163. The Independent Psychiatrist testified that the Individual had made changes in order to get along with his family: for example, the Individual "has stopped being compulsive about his closet." Tr. at 164. While the evidence in the record clearly indicates that the Individual exhibited flexibility under stressful conditions when he was in the military, the manner in which the Individual conducted himself during the recent HRP process, which I will discuss at greater length below, exhibited the contrary. Therefore, I am also persuaded by the DOE Psychiatrist's conclusion on this diagnostic criterion as well. Accordingly, the DOE Psychiatrist's Report and testimony has convinced me that the Individual possesses at least five of the diagnostic criteria for OCPD. Only four of these criteria need be present to support a diagnosis of OCPD.

The Individual=s personality disorder raises a serious and significant security concern under 10 C.F.R. ' 710.8(h). Consequently, I find that the DOE security office properly invoked Criterion H in issuing the Notification letter.[8] A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual=s eligibility for access authorization. *See Personnel Security Hearing,* Case No. VSO-0244, 27 DOE **&** 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing,* Case No. VSO-0154, 26 DOE **&** 82,794 (1997) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual=s access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. ' 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his Obsessive Compulsive Personality Disorder. After considering all of the evidence in the record, I find that he has not done so.

As a Hearing Officer, my responsibility is to make an independent assessment of the seriousness of the risk to national security and the common defense posed by allowing an individual to possess a DOE access authorization. In that connection, I will consider those factors set forth at 10 C.F.R. ' 710.7(c) in deciding whether restoring the Individual's access authorization would endanger the common defense and security and would be clearly consistent with the national interest.

Every individual is a security risk: the question before me is whether or not the Individual's level of risk is acceptable. In the present case, the Individual has been correctly diagnosed with a OCPD, which clearly increases the Individual's level of risk. I am not of the opinion that every individual properly diagnosed with OCPD is an unacceptable security risk. However, in the present case the Individual does not recognize that he has this disorder, or any other disorder, and refuses to accept treatment for it. As the DOE Psychiatrist states in her report:

> Unfortunately, although he had the chance to confront, explore, and treat his difficulties, [the Individual] continued to resist the opportunity to date. It is such a sad situation, because by themselves individually, all of his disorders . . . are amenable to treatment. He does not even realize that the DOE's concerns might not necessarily be the illnesses themselves, but what he actually does with them. His extreme opposition to even recognizing that there is a problem is most likely a function of his Personality Disorder.

DOE Exhibit 17 at 34. The DOE Psychiatrist provided similar testimony at the Hearing. Tr. at 47. The DOE Psychiatrist's report further states:

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[8] This criteria provides that a security concern is raised when an individual has:

> 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) (emphasis supplied).

> A personality disorder may cause a serious defect in judgment because of maladaptive belief systems that lead the individual to behave in such a way that is disruptive in [a] work setting. In particular, [the Individual's] stubborn agenda to do what he thinks is right had reached a point to such an extreme that he had to resort to distortion of facts and manipulation to achieve his desired goal. He had not been reliable in following through agreed recommendations for resolution of his HRP clearance after a significant amount of time. His 'independent psychiatric evaluation by his expert of choice' had turned out to be an orchestrated effort to simply 'rebut' another expert's opinion that he did not approve of.

DOE Exhibit 17 at 35. At the end of the hearing, after all of the other witnesses, including the Individual and the Independent Psychiatrist, had testified, the DOE Psychiatrist was called again to testify. The DOE Psychiatrist testified she still believed that the Individual was properly diagnosed with OCPD. Tr. at 125. The DOE Psychiatrist testified that the Individual's OCPD causes a significant defect in his judgment and reliability. Tr. at 124. The record contains numerous indications that, at times, the Individual's judgment and reliability have been impaired and that the Individual has been experiencing distress resulting from his combat experience and his mental disorders. *See, e.g.,* DOE Exhibit 46 at 28. The record shows that the Individual and his family have both experienced a great deal of distress as a result. DOE Exhibit 46 at 16, 17. The Individual has admitted that he has had problems adjusting to the lack of structure in civilian life. DOE Exhibit 46 at 28. Yet his resistance to therapy has prevented him from fully benefiting from counseling. When the Individual has obtained counseling, it has been for the purposes of mollifying his wife or proving that he has no problems. DOE Exhibit 46 at 12, 27, 33-34.

For example, the record shows that the Individual had been prescribed Zoloft for several years while subject to the HRP. The record shows that the HRP was well aware of the Individual's Zoloft use and did not consider it to be problematic. DOE Exhibit 30. However, after the Individual's routine psychological screening test indicated the possibility of a mental disorder that needed further investigation (and after the HRP received the Individual's VA records which showed that the Individual had previously been diagnosed with a personality disorder at the VA), the HRP officials began inquiring as to why the Individual was using Zoloft. The Individual perceived these inquiries as a concern about his Zoloft use (rather than a concern about why he needed Zoloft) and discontinued using Zoloft. The DOE Psychiatrist convincingly testified that the Individual's discontinuing of Zoloft was an example of "an irrational decision" that exhibited a significant defect in judgment and reliability caused by his personality disorder. Tr. at 64-67.

The DOE Psychiatrist testified that the Individual engaged in deceitful behavior during the HRP and administrative review process. Tr. at 59-60, 147-150, 153. She testified that the Individual kept reiterating that he was not seeing the Counselor for treatment, even though the Counselor indicated that he was treating the Individual. Tr. at 151. The DOE Psychiatrist also testified that the Individual attempted to use deceit in order to delay the issuance of her report and attempted to imply that DOE officials were lying about him.[9] Tr. at 48-53, 59. Finally, the DOE

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[9] The DOE Psychiatrist characterized the Individual's attempts to stall her decision as passive-aggressive behavior. Tr. at 88-89.

Psychiatrist noted that the Individual had implied that DOE has been withholding medical records from the Individual and his expert witness (the Independent Psychiatrist), even though DOE provided copies of the Individual's medical records to the Individual at an earlier date. Tr. at 60-61.

Moreover, I am concerned by some of the Individual's statements during this proceeding in which the Individual's candor appears to be questionable. For example, during his second PSI, the Individual was asked if anyone at the VA had told him what his condition was. The Individual responded by indicating that the VA doctors told him he was suffering from depression. DOE Exhibit 46 at 30. Significantly, the Individual failed to mention his personality disorder diagnosis in his response to this questioning. The medical records from the VA indicate that the VA Psychiatrist discussed the diagnosis of personality disorder with the Individual. Specifically, the VA Psychiatrist states, in the Medical records obtained from the VA:

> **Explained to PT [patient] a little more about his personality D/O [disorder] diagnosis** and the fact that Meds will not change his underlying personality or make him something he is not, but they might help stabilize his mood so that others will know more what to expect from him and how to deal with his personality. **He expressed understanding** and said he would like to work on stabilizing his mood.

DOE Exhibit 24 at 6 (emphasis supplied).

Just as the record contains instances where the Individual's judgment and reliability have been questionable, the record also contains numerous testimonials to the Individual's character and integrity. Moreover, the record shows that the Individual has exhibited instances of extreme moral and physical courage, both in civilian life and in the military. For example, the Sheriff for whom the Individual worked as a Deputy Sheriff recounted an incident where the Individual was called to a domestic disturbance at a prominent elected official's home. The elected official had physically abused his spouse and the Individual arrested him, despite being warned by the official of his influence. The record also indicates that the Individual received a Navy Achievement Medal from the Secretary of the Navy for leading the squad XXXXX XXXX XXXXXX in Operation Desert Storm. The Individual received another Navy Achievement Medal from the Secretary of the Navy for leadership. The record also shows the Individual received a Certificate of Commendation for recognizing that a Marine was suffering from a life-threatening condition and taking the ill Marine back to camp. By doing so, the Individual risked court marshal in order to save a Marine's life. Certificate of Commendation dated May 6, 1995. This action clearly demonstrated flexibility under extremely stressful circumstances.[10] However,

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[10] While in the Marines, the Individual received the following awards and commendations as well: two Letters of Appreciation, Good Conduct Medal, Sea Service Deployment Ribbon, National Defense Service Medal, Combat Action Ribbon, South Asia Service Medal, Kuwait Liberation Medal, six Rifle Expert Badges, and five Pistol Expert Badges.

the DOE Psychiatrist convincingly testified that the Individual's ability to function at a high level during periods of extreme stress in the military, especially in combat, does not mean that he will not succumb to stress in other situations. Tr. at 151-52. Unfortunately, those instances where the Individual has exhibited extraordinarily good judgment and reliability do not eliminate the risks posed by the Individual's lapses in judgment.

Moreover, throughout the six years of his present employment, he has apparently been a model employee, except for his interactions with the HRP. However, as the DOE Psychiatrist testified, personality disorders often do not cause problems until the Individual is placed under stress. Tr. at 61-63. When the Individual began having problems with the HRP, the Individual began exhibiting maladaptive behaviors. Tr. at 64.

IV. CONCLUSION

In essence, my decision is a risk assessment. On the whole, the testimony and evidence in this case clearly shows that the Individual has Obsessive Compulsive Personality Disorder. Moreover, the record clearly shows that, at times, this personality disorder has caused a significant defect in the Individual's judgment and reliability. Because the Individual does not recognize that he has OCPD and therefore does not receive treatment for it, and because the Individual has exhibited a significant defect in judgment and reliability, I find that he is not an acceptable risk.

Accordingly, I conclude that the Individual has not presented convincing evidence that warrants restoring his access authorization. Since the Individual has not resolved the DOE=s security concerns under Criterion H, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. ' 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: July 9, 2007