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**United States Department of Energy
Office of Hearing and Appeals**

In the Matter of Personnel Security Hearing)	
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Filing Date: May 1, 2013)	Case No.: PSH-13-0057
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Issued: August 28, 2013

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.²

I. BACKGROUND

The individual works for a Department of Energy (DOE) contractor and holds a DOE access authorization, now in suspension. Beginning in 2010 or 2011 through November 2012, the individual used hydrocodone other than as directed and was consuming increasing amounts of alcohol. In December 2012, following an intervention by family members, he voluntarily admitted himself into an inpatient substance abuse program, which diagnosed him as suffering from Alcohol

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Dependence, Opioid Dependence, and Depression. Because this information raised concerns about the individual's continued eligibility for access authorization, the local security office (LSO) called him in for an interview with a personnel security specialist. After the Personnel Security Interview (PSI) failed to resolve those concerns, the LSO referred the individual to a DOE-sponsored psychiatrist (DOE psychiatrist) for an evaluation. The DOE psychiatrist submitted a written report based on this evaluation to the LSO, which included diagnoses of Alcohol Dependence, Opioid Abuse, and Major Depression.

After reviewing this report and all of the other information in the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a Notification Letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced nine exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced three exhibits into the record and presented the testimony of six witnesses in addition to his own testimony.

II. REGULATORY STANDARDS

The regulations governing the individual's eligibility for access authorization 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." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* *See generally Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the

interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. Derogatory Information

The individual provided the following information during his PSI and his psychological evaluation. In 2010 or 2011, the individual began to take more hydrocodone than he had been prescribed and, in his January 2013 PSI, he stated that he was addicted to the substance from 2011 until November 2012. At about the same time, he also increased his alcohol consumption, so that he would regularly take eight to 12 hydrocodone pills and drink 18 to 24 beers on either Friday or Saturday of most weekends. Later in that period, he consumed those amounts of hydrocodone and beer on both Friday and Saturday nights, becoming intoxicated and blacking out. On Thanksgiving weekend of 2012, the individual blacked out for two days after consuming an 18-pack of beer and an unrecalled amount of hydrocodone. He stated at the PSI that he was abusing the substances to cope with his feelings of depression. At the beginning of December 2012, the individual’s family staged an intervention, after which he voluntarily entered into an inpatient substance abuse program. The DOE psychiatrist evaluated the individual in February 2013, at which time he concluded that the individual met the criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR), for Alcohol Dependence, Opioid Abuse, and Major Depression.

B. The Notification Letter

In large part, this derogatory information forms the basis for the allegations set forth in the Notification Letter. These allegations pertain to paragraphs (h), (j), and (k) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion H refers to information indicating that the individual has an illness or mental condition of a nature that, in the opinion of a psychiatrist, “causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). As support for invoking this criterion, the Notification Letter cites the DOE psychiatrist’s February 2013 diagnosis of Alcohol Dependence and Opioid Abuse, each in Early Full Remission, and Major Depression, Recurrent.

Pursuant to Criterion J, information is derogatory if it indicates that the individual “has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as alcohol dependent or suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Under this criterion, the Notification Letter cites the DOE psychiatrist’s diagnosis of Alcohol Dependence. The Notification Letter also cites the individual’s admissions at his PSI that he sought treatment after he realized that he had been using alcohol to cope with his feelings of depression; that he was habitually consuming 18 to 24 beers on weekends which, in combination with his inappropriate use of hydrocodone, becoming intoxicated three to four times a month and frequently having blackouts; and that he suffered a two-day blackout from such substance abuse over Thanksgiving weekend in 2012.

Criterion K applies to information that indicates that the individual has possessed, used, or experimented with “a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician . . . or otherwise authorized by Federal law.” 10 C.F.R. § 710.8(k). As support for invoking this criterion, the Notification Letter cited the DOE psychiatrist’s diagnosis of Opioid Abuse and the individual’s admissions during his PSI that he had been addicted to hydrocodone, taken as many as 12 pills per day not as prescribed by his physician, and taken the drug to cope with his feelings of depression.

The Notification Letter also refers to the “Bond Amendment,” 50 U.S.C. § 435c, as an additional basis for the LSO’s security concerns. The Bond Amendment provides, in pertinent part, that a federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict. 50 U.S.C. § 435c(b). As support for its invocation of this amendment, the LSO cites the same admissions the individual made at the PSI as those cited in support of its Criterion K concerns.³

C. The DOE’s Security Concerns

The derogatory information set forth in the Notification Letter adequately justifies the DOE’s invocation of Criteria H, J, and K and the Bond Amendment, and raises significant security concerns. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Misuse of a prescription drug similarly raises questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Those concerns are heightened in this case because a psychiatrist has determined that the individual’s Alcohol Dependence, Opioid Abuse, and Major Depression are conditions that may impair judgment and reliability. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines), at Guidelines G, H, and I. The individual’s unlawful use of hydrocodone constitutes derogatory information that, unless resolved, would bar the DOE from granting or renewing his security clearance under the Bond Amendment.

IV. FINDINGS OF FACT AND ANALYSIS

A. Criteria H and J

At the hearing, the individual attempted to demonstrate rehabilitation from his Alcohol Dependence, Opioid Abuse, and Depression. In 2009, the individual’s sister observed that the individual was misusing alcohol and spoke to him about it. Transcript of Hearing (Tr.) at 35. He began attending

³ Within the DOE, cleared incumbents determined to have unlawfully used a controlled substance within 12 months of the DOE becoming aware of such usage are considered subject to the Bond Amendment and all such cases are immediately processed for administrative review. *See* DOE Order 472.2, Appendix E at E-1; *Personnel Security Hearing*, Case No. PSH-13-0036 (2013).

Alcoholics Anonymous (AA) meetings and maintained his sobriety for a year or two. *Id.* at 32-33, 35. His sister believes he was not fully successful in his sobriety because he is a caretaker by profession and, once involved in AA, focused more on helping others recover than addressing his own needs. *Id.* at 33. The individual's second attempt at sobriety, in 2012, was more serious from the start. The family intervention made him realize that his alcohol and drug habits had a significant impact on others, especially his children, and not just on him as he had believed until then. *Id.* at 145. It also made him realize that he had a serious substance abuse problem, which he had denied in the past, despite earlier arrests and attempted interventions. *Id.* at 149. He also realized that he was depressed and had been self-treating his low feelings—brought on by his parents' deaths, his divorce, and his children growing up and moving away—by taking hydrocodone and alcohol and by devoting himself to a new job. *Id.* at 113-15. He admitted himself into a 28-day inpatient substance abuse program, which addressed both his addiction to alcohol and hydrocodone and his underlying stresses, depression and anxiety. *Id.* at 97-98. Upon completion of the inpatient program, the individual was released with recommendations to attend an intensive outpatient program and AA, with medication management by his primary care physician. *Id.* at 92.

Since he entered the substance abuse program in December 2012, the individual has maintained his sobriety. He testified that he last consumed alcohol on November 29, 2012, and that he has not taken any hydrocodone since November 28, 2012. He now treats any pains with Tylenol or Aleve. *Id.* at 128-29. None of the other witnesses at the hearing, including the DOE psychiatrist and the individual's sister, neighbor, counselor, and AA sponsor, had any reason to question the individual's claim of sobriety. *Id.* at 25-30, 47, 166, 187. The individual has been very motivated throughout his treatment to regain his "quality of life." *Id.* at 86. Each step of his treatment has forced him to look within himself and not focus on helping others as a method to avoid introspection. *Id.* at 33, 121-23, 162, 164. The individual's counselor, who treated him in 2009 as well as recently, remarked that in contrast with his 2009 treatment, during which he was not fully engaged but rather was "rescuing others," he is now willing to open up to others about himself, at the risk of personal discomfort. *Id.* at 170-71. He is devoted to AA, attending as often as three times a day. *Id.* at 29, 64-66; Exhibit C. He sees a psychiatrist monthly for medication management. *Tr.* at 106. The individual has a large network of support: his AA mentor and other members of his AA group, his counselor, his psychiatrist, his sister, brother, and children, and a number of co-workers. *Id.* at 132.

The individual's counselor testified about his progress since leaving the inpatient program in December 2012. She stated that while the individual's outpatient therapy first addressed sobriety and progressed to emotions and codependency, it now focuses more on the causes of his depression. *Id.* at 164. She further stated that his depression is not yet in remission, but it is now mild, and she observes no problems arising from it at this time. *Id.* at 176, 180. Finally, when asked about the individual's risk of relapse, she expressed her opinion that his prognosis was good, given his current level of participation. She recognized that, as of the hearing, the individual had completed seven months of sobriety, and though he has participated more fully in his recovery than most others, seven months was a less reliable indicator than the recognized milestones of nine months and, in particular, one year. *Id.* at 166, 172, 175.

The DOE psychiatrist testified after hearing the testimony of the other witnesses, including the individual and his counselor. When asked for a prognosis for the individual that reflects any new information he garnered from the testimony he had heard, he offered the following. He believes that the recommendations he made in his evaluative report, including 12 months of sobriety, treatment of

the individual's depression, and management of the individual's psychotropic medications by a psychiatrist, are still appropriate. *Id.* at 183-84. He expressed his opinion that the individual was making good progress in his recovery, and met his high expectations of an individual after seven months of treatment. *Id.* at 185. Nevertheless, he felt that a full year of abstinence and treatment would be a significantly better indicator of a good prognosis. *Id.* In reaching this conclusion, the DOE psychiatrist specifically recognized his initial inpatient treatment, the intensity of the individual's participation in AA and in his outpatient counseling, and the management of his medications by a psychiatrist. *Id.* at 190, 192.

After reviewing this testimony and that of the other witnesses, as well as the record in this matter as a whole, I am convinced that the individual is fully committed to his recovery. However, I find that he has not adequately addressed the DOE's security concerns under Criteria H and J, because his chances of relapse to Alcohol Dependence or Opioid Dependence at this stage of his recovery remain unacceptably high, particularly in light of his depression, which is still being treated and is not yet in remission, according to his counselor. The treatment recommendations of the DOE psychiatrist, as discussed above, and the opinions of the DOE psychiatrist and the individual's counselor expressed at the hearing, support this conclusion. The experts agreed that seven months of treatment and sobriety are indicators of the individual's probable success in maintaining his sobriety. Each expert, however, expressed concern over the reliability of that relatively short period as an indicator, demonstrating a preference for a full year of sobriety instead. Under these circumstances, where the individual combined alcohol with hydrocodone and blacked out with regularity, I, too, believe that seven months of abstinence from alcohol is too short a period of rehabilitation, even where, as here, the individual has since applied himself unstintingly to his ongoing treatment. The individual has not adequately addressed the DOE's security concerns under Criteria H and J.

B. Criterion K and the Bond Amendment

I reach a similar conclusion regarding Criterion K. Much to the individual's credit, he had not used hydrocodone for seven months, as of the hearing. He was receiving treatment for his drug addiction, along with his alcohol dependence and his depression, for the entire seven-month period, progressing from an inpatient residential setting to an intensive outpatient program to aftercare, supplemented with counseling and AA meetings. As discussed above in detail, he has wholeheartedly committed himself to his recovery and has met the DOE psychiatrist's expectations fully for a person at his stage of treatment. Nevertheless, as stated above, neither the DOE psychiatrist nor the individual's counselor were confident that seven months of abstinence and treatment were a sufficiently reliable indicator of the individual's prognosis for long-term recovery from his Opioid Abuse, preferring to rely instead on a full year of abstinence as adequate evidence of rehabilitation. For the reasons set forth in the above section, I agree with the experts' opinions that seven months of abstinence and treatment is not sufficient to demonstrate adequate evidence of rehabilitation, and until the individual achieves rehabilitation from his Opioid Abuse, the risk of continued misuse of a controlled substance remains significant, particularly in this case, where the concerns raised by the co-existence of Alcohol Dependence and Major Depression are not yet resolved.

Consequently, I find that the individual has not adequately addressed the DOE's security concerns under Criterion K. I also find that the individual has not mitigated concerns that the Bond Amendment bars him from holding a DOE access authorization. Under other circumstances,

Hearing Officers have concluded that an individual's misuse of a prescription drug was an isolated incident and unlikely to recur. *See, e.g., Personnel Security Hearing, Case No. PSH-12-0049 (2012)*. In the present case, however, the individual was addicted to hydrocodone as recently as November 2012. Because I find that the individual's seven months of abstinence from hydrocodone and treatment for his addiction is too short a period to reduce the risk of relapse to a sufficiently low level, I conclude that the individual must still be considered, under the Bond Amendment, an unlawful user of a controlled substance, to whom a "federal agency may not grant or renew a security clearance." 50 U.S.C. § 435c(b). *Personnel Security Hearing, Case No. PSH-12-0046 (2012)*.

VI. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns under Criteria H, J, and K of 10 C.F.R. Part 710 and the Bond Amendment, and therefore has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: August 28, 2013