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

In the Matter of: Personnel Security Hearing)

Filing Date: July 8, 2015)

Case No.: PSH-15-0057

Issued: September 22, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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 be restored.²

I. BACKGROUND AND FINDINGS OF FACT

This decision concerns a DOE security clearance holder with a history of degenerative back disease. Tr. at 55; Exhibit 8 at 8-9. To relieve the pain resulting from this condition, the Individual’s physician prescribed Tramadol, a painkiller, to be used on an “as-needed” basis. Tr. at 54-55; Exhibit 8 at 8-9, 12. The Individual’s dog had also been prescribed Tramadol pills of an identical dosage (50 milligrams).³ Tr. at 56; Exhibit 8 at 9. On the evening of Sunday, February 15, 2015, the Individual began experiencing back pain. Exhibit 8 at 9. He realized that he had left his bottle of Tramadol at his office, which was located about 40 to 50 minutes from his home. Tr. at 55, 58; Exhibit 7 at 9; Exhibit 8 at 9, 20. Instead of driving to his office, which would have involved a round trip of at least an hour and 20 minutes, he decided to take one of his dog’s Tramadol pills. Exhibit 7 at 6-9; Exhibit 8 at 9. The Individual planned to put one of his Tramadol

¹ An access 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. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.doe.gov/OHA>.

³ The Individual obtained his Tramadol and his dog’s Tramadol at the same pharmacy. Exhibit 8 at 26.

pills in his dog's bottle at a later date. Tr. at 56. The Individual only used his dog's Tramadol on this one occasion. Tr. at 57. The Individual testified at the hearing that at the time that he substituted his dog's Tramadol for his, he did not believe it to be misuse or abuse. Tr. at 56, 62, 64, 66. He now believes his substitution was a mistake. Tr. at 63.

The next day, the Individual reported his use of his dog's pill to his employer's security office. Tr. at 58; Exhibit 7 at 8; Exhibit 8 at 9. On February 19, 2015, his employer submitted a Personnel Security Information Report (PSIR) to the Local Security Office (LSO). Exhibit 6 at 1. The PSIR characterized this information as "illegal drug use." Exhibit 6 at 1.

The LSO conducted Personnel Security Interviews (PSI) of the Individual on April 1, 2015, and on April 22, 2015. During the April 1, 2015, PSI the Individual was asked why he took his dog's Tramadol; he replied: "I was in pain and I didn't think it was a big deal." Exhibit 8 at 11.

Because the LSO believed that the Individual's use of his dog's Tramadol constituted illegal drug use, it issued a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on July 8, 2015.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I heard testimony from the Individual, two of his friends, his former co-worker/friend, his coworker, and his supervisor. *See* Transcript of Hearing, Case No. PSH-15-0057 (hereinafter cited as "Tr."). The LSO submitted eight exhibits, marked as Exhibits 1 through 8, while the Individual submitted 13 exhibits, which are marked as Exhibits A through M.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

The Notification Letter asserts that information in the possession of the DOE created a substantial doubt concerning the Individual's eligibility for a security clearance. In an attachment to the Notification Letter, the LSO contended that the derogatory information fell within the purview of 50 U.S.C. § 3343(b) (the Bond Amendment) and one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8(k) (Criterion K).

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. § 3343(b). In support of its invocation of this amendment, the Notification Letter cites the Individual's misuse of his dog's prescription drug, Tramadol, on February 15, 2015.

Criterion (K) pertains to information indicating that the individual has transferred, possessed or used a drug listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970, except as prescribed or administered by a physician or otherwise authorized by federal law. In support of this Criterion, the Notification Letter cites the Individual's admission that he elected to use his dog's Tramadol instead of his own prescription on February 15, 2015. The Notification Letter also states that the Individual stated that he considered this substitution to be "no big deal."

The Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) state: “Use of an illegal drug or misuse of a prescription drug can raise 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.” Adjudicative Guidelines at ¶ 24. The Adjudicative Guidelines further define “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” Adjudicative Guidelines at ¶ 24(b).

III. REGULATORY STANDARDS

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

IV. ANALYSIS

Based on the record in this matter, I find that the Individual is not an “addict” or an unlawful user of a controlled substance within the meaning of the Bond Amendment. I also find that the individual has mitigated the DOE's security concerns under Criterion K. My reasons for these conclusions are set forth below.

While the Individual's action exhibited less than perfect judgment, and technically violated the laws concerning the administration and use of pharmaceuticals, the doubts raised by his action are certainly not substantial, and do not demonstrate a significant deficit in judgment, reliability, or trustworthiness. Common sense suggests that Congress's use of the term “unlawful user” is meant for those persons who use controlled substances for recreation or because they are addicted to those substances, rather than those persons, including the Individual, who used the controlled substance for medical reasons in a manner generally consistent with his physician's direction, but who slightly deviated from the rules in order to prevent prolonging his physical discomfort.

The Bond Amendment incorporates by reference the definition of “addict” set forth at 21 U.S.C. § 802. As so defined, “addict” refers to a person “who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.” The Individual clearly does not meet this definition. As an initial matter, he is not a habitual user of Tramadol or any other controlled substance. As I have discussed above, the usage was an isolated incident that is unlikely to be repeated. Furthermore, the mental health professional who examined the Individual opined that he does not suffer from a substance use disorder. *See* Exhibit B.

The Bond Amendment does not define “an unlawful user of a controlled substance.” Previous OHA cases have found that when an individual's usage was an isolated event which is unlikely to recur, the individual does not fall within the meaning of “an unlawful user” under the Bond Amendment. *See, e.g., Personnel Security Hearing*, Case No. PSH-13-0036 (2013) (single use of a sibling’s prescription amphetamine did not define the individual as an “unlawful user” under the Bond Amendment); *Personnel Security Hearing*, Case No. PSH-12-0031 (2012) (ingestion in a suicide gesture of four hydrocodone tablets for which the individual held a prescription was an isolated event unlikely to recur and, therefore, the individual is not an unlawful user under the Bond Amendment); *Personal Security Hearing*, Case No. TS0-1059 (2011) (use of spouse's prescription drug four or five times over a 16-month period while having one's own prescription for the same drug does not constitute being an unlawful user under the Bond Amendment).

Similarly, previous OHA cases concerning Criterion K have found that individuals can resolve concerns arising from isolated, one-time uses of illegal drugs under the whole person concept. *See Personnel Security Hearing*, Case No. PSH-14-0003 (2014) (finding sufficient mitigation for one-time use of an illegal drug, Oxycodone, under Criterion K and Bond Amendment); *Personnel Security Hearing*, Case No. TS0-0926 (2010) (finding sufficient mitigation under Criterion K of one-time use of an illegal drug resolves security concerns under the Bond Amendment).

Because the Individual has demonstrated that he substituted his dog’s prescription Tramadol in a manner consistent with his physician’s direction for a legitimate medical purpose, I find that he has resolved any doubt concerning the his eligibility for a security clearance. Accordingly, I conclude that his security clearance should be restored.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion K and the Bond Amendment. However, after considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge

Office of Hearings and Appeals

Date: September 22, 2015