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

In the Matter of Personnel Security Hearing)
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Filing Date: March 15, 2016) Case No.: PSH-16-0016
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_____)

Issued: June 30, 2016

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. During an August 4, 2015, personnel security interview (PSI), the individual admitted that from 2010 to April 2015, he abused and illegally used the prescription medication Oxycodone, a Scheduled II Drug listed on the Controlled Substance Act of 1970. In addition, the individual admitted to excessive alcohol use. During that PSI, the individual was referred to a DOE consultant psychologist (DOE psychologist) for an agency-sponsored evaluation.

On February 5, 2016, after reviewing the DOE psychologist’s report, the transcript of the PSI, and the rest of the individual’s personnel security file, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt

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(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of 50 U.S.C. § 435c (the Bond Amendment) and four potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), (k) and (l) (Criteria H, J, K and L, respectively).

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing, the individual presented his own testimony and that of six witnesses, including his Alcoholics Anonymous (AA) sponsor, his supervisor, two co-workers, his sister and his son. The DOE counsel presented the testimony of the DOE psychologist. Both the DOE Counsel and the individual submitted a number of written exhibits prior to the hearing.

II. The Notification Letter and the Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's continued eligibility for access authorization. The information noted in the letter specifically cites to the Bond Amendment and Criteria H, J, K and L.

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 of its invocation of this amendment, the Notification Letter cites the individual's misuse of prescription medication Oxycodone from 2010 to April 2015.²

Criterion (H) defines as derogatory information indicating that an individual has an illness or mental condition which, in the opinion of a licensed clinical psychologist, causes or may cause a significant defect in her judgment or reliability. In this case, the Notification Letter cites the diagnoses of the DOE psychologist that the individual suffers from Opioid Dependence in early remission, and Alcohol Dependence in early remission, conditions which, he opined, causes or could cause a significant defect in the individual's judgment or reliability.

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 abused and illegally used the prescription medication Oxycodone from 2010 to 2015 as well as his admission that he used other illegal drugs, including marijuana, hashish and cocaine in the past.

² On August 12, 2009, the DOE Deputy Secretary issued DOE Notice 470.5, which implemented the Bond Amendment in the DOE. In that Notice, the Deputy Secretary, among other things, asserted that persons subject to the Bond Amendment (1) will continue to be processed for Administrative Review in cases where the Agency is unable to "waive" the Bond Amendment; and (2) will receive the same due process rights that existed before the implementation of the Bond Amendment.

Criterion (J) defines as derogatory information indicating that the individual has been, or is a user of alcohol habitually to excess, or has been diagnosed by a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Under this Criterion, the Notification Letter refers to the diagnosis of the DOE psychologist that the individual suffers from Alcohol Dependence, as well as to several admissions by the individual regarding his excessive use of alcohol, his alcohol-related incidents, and his alcohol treatment.

Under Criterion (L), information is derogatory if it tends to show that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Under this Criterion, the Notification Letter cites the individual's criminal conduct including a 2015 arrest for Driving Under the Influence (DUI), his illegal use and purchase of prescription medication Oxycodone as well as his operation of a vehicle while intoxicated on numerous occasions.

This derogatory information adequately justifies the DOE's invocation of Criteria (H), (J), (K) and (L), and raises significant security concerns. Conduct involving questionable judgment, untrustworthiness, or unwillingness to abide by rules and regulations could indicate that a person may not properly safeguard classified information. Improper or illegal involvement in drugs may also indicate that a person may be unable to safeguard such information. Emotional and mental disorders are security concerns because they may indicate a defect in judgment, reliability, or stability. Also, excessive consumption of alcohol is a security concern because this behavior can lead to the exercise of questionable judgment and the failure to control impulses. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E, G, H, and I (Adjudicative Guidelines).*

III. Regulatory Standards

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense" judgment after consideration of all relevant information. 10 C.F.R. § 710. 7(a). I must, therefore, consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise the national security. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant material factors. 10 C.F.R. § 710.9(c).

The purpose of a DOE administrative proceeding under 10 C.F.R. Part 710 is to provide the individual an opportunity to submit information in support of her eligibility for access authorization. 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence

sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. Findings of Fact and Analysis

At the hearing, the individual did not dispute the allegations in the Notification Letter. Instead, he attempted to demonstrate, through his testimony and that of his witnesses, that he does not suffer from a significant defect in judgment and reliability, and that the behavior related to his illegal drug use and his alcohol use is unlikely to recur.

A. Criteria (H) and (J)

The Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions. Those factors include information indicating that: (i) the condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment program; (ii) the individual has voluntarily entered into, and is participating in, a counseling or treatment program for a condition that is amenable to treatment, and has received a favorable prognosis by a duly qualified mental health professional; (iii) there is a recent opinion by a duly qualified mental health professional retained by, or acceptable to, the U.S. Government that the individual’s condition is under control, or in remission, and has a low probability of recurrence; (iv) the individual’s condition is temporary and has been resolved, with the individual showing no current signs of emotional instability; and (v) there is no indication of a current problem. *See Adjudicative Guidelines, Guideline I, ¶ 29.*

At the outset, I note that the favorable testimony of the DOE psychologist establishes the existence of mitigating factor (iii), and, along with the testimony of the individual, convinces me that he has adequately addressed the DOE’s security concerns under Criteria (H) and (J). The individual has a past history of alcohol use. DOE Exh. 4. According to the individual, he began drinking alcohol at an early age. By age 16, he was drinking heavily, consuming a six-pack of beer once a week and becoming intoxicated. *Id.* In 1982, the individual enlisted in the United States Army and states that he drank on an “almost” daily basis. *Id.* In 1983, the individual had his first Driving While Intoxicated (DWI) arrest. *Id.* At the time, his blood-alcohol concentration was measured at .08. After this arrest, he entered his first alcohol abuse treatment program, but admits that after his alcohol counseling he continued to have problems with his use of alcohol. In 1984, he was discharged from the Army because of his alcohol use. The individual admitted that from 1990 to 1997, he stopped drinking alcohol “because his drinking was getting old and he was experiencing hangovers once in a while.” He began drinking again in 1998 and drank excessively becoming intoxicated three to four times a year. In 2004, the individual was involved in an automobile accident. He admitted that at the time of the accident he was intoxicated after drinking eight to nine, 12-ounce beers, and three to four shots of whiskey. In January 2005, he was admitted to a 28-day inpatient alcohol treatment program. During this program, the individual was diagnosed with Alcohol Dependence. Despite his counselor advising him during the inpatient treatment not to drink alcohol ever again, he started drinking again in 2013. The individual admitted that from

2013 to April 2015, he drank to intoxication every time he consumed alcohol. In April 2015, he was arrested and charged with DUI 1st Offense. He admitted that he drank about one fifth of a bottle of whiskey prior to his arrest. His blood-alcohol concentration measured at .21. In May 2015, the individual was admitted into another treatment program. Prior to his admission, he drank two, 12-ounce beers, and two shots of whiskey. *Id.*

The individual also has a past history of illegal drug use. He reported that he first tried marijuana in 1974 when he was about 10 years old. *Id.* The individual admitted that from 1982 to 1987, he used marijuana twice. From 1983 to 1986, he used hashish three times in combination with marijuana. He also admitted that he used cocaine three times from 1982 to 1983 and once in 1985. The individual used LSD once in 1983 and once in 1986. He reported that, from 1990 to 1997, he did not use any illegal drugs or alcohol. When he resumed drinking in 1997, he also resumed his marijuana usage, using marijuana about once a week. From 2000 to December 2004, the individual used marijuana once a month or less. *Id.*

In 2008, the individual's primary care physician began prescribing narcotic pain medication for treatment of the individual's back pain. He was initially prescribed Oxycodone, 10 mg tablets, to be taken as needed for pain. He reported that later, in 2010, a nurse practitioner began prescribing the medication at a higher dosage, 20 mg, and the individual began taking the medication up to three times daily. It was at this time that the individual began abusing Oxycodone. According to the individual, from 2010 to April 2015, he abused the prescription Oxycodone by taking 80 to 100 milligrams of the drug every day. He admitted that during this period, his wife and children were concerned about him abusing the medication. The individual also admitted that he reported to work under the influence of Oxycodone approximately ten times. *Id.*

During the hearing, the individual testified about his alcohol and illegal drug use. He testified that he no longer desires to drink or use drugs and has decided to make better choices in his life. Transcript of Hearing (Tr.) at 103. The individual last drank alcohol on May 4, 2015. He testified that he has experienced a certain "freedom" since completing an inpatient alcohol treatment program in June 2015. *Id.* at 104 and 105. The individual stated that his most recent treatment was different, noting that he participated in previous treatment programs for the wrong reasons, including to save his marriage. *Id.* According to the individual, he is now focusing on recovery for himself and on rebuilding relationships with his family members. He testified that his most recent alcohol treatment program taught him how to deal with stressful issues in his past that contributed to his abuse of alcohol and drugs, including the death of his father and an abusive stepfather. *Id.* at 108. The individual stated that he experienced a "spiritual awakening" in treatment and now wants to be someone who is accountable for his actions. *Id.* at 109. He added that he is working through the steps of AA with his sponsor. With respect to his back pain, the individual testified that he is no longer in major pain because he is taking care of himself physically. *Id.* at 110.

The individual's son corroborated the individual's testimony that he has been "clean and sober" for over a year now. *Id.* at 17. He acknowledged that the individual has made bad decisions with alcohol and drugs in the past, but is now taking a more positive approach to life. *Id.* at 18. The individual's son testified that he sees a totally different person in his father now, noting that after his 2015 treatment, his father "got it" and now understands the importance of abstaining. *Id.* at

20. He further testified that he feels confident that the individual has his life under control. *Id.* at 22. According to the son, the individual has changed his lifestyle, including his eating habits and social activities. Likewise, the individual's sister testified that the individual now understands the consequences of his destructive behavior and is confident he will remain sober in the future. *Id.* at 85. The individual's AA sponsor, who has sponsored the individual for about a year, testified that he believes the individual has been sober for about 13 months. He testified that the individual has worked through all of the 12 steps of AA and now looks at the world in a more positive light. Finally, the individual's foreman and two co-workers testified that the individual is an honest, trustworthy and reliable person.

After listening to the individual and his witnesses' testimony, the DOE psychologist noted first that, after his October 2015 evaluation, he recommended two years of treatment for the individual to be considered adequately rehabilitated or reformed because the individual's disorders were severe. *Id.* at 132. He further noted that at the time of his evaluation, the individual only had about five months of sobriety and treatment under his belt. *Id.* However, the psychologist testified that although the individual has only been in treatment for about a year, he heard something "unusual" in the hearing testimony that changed his recommendation for the individual. *Id.* at 135. The psychologist testified that the individual has made exceptional progress in his treatment. He noted the impressive testimony from the individual's son and sister as well as the individual's AA sponsor. He also noted the positive recommendation made by the individual's treatment provider at DOE and particularly the good prognosis given to the individual. Exh. A. In light of these positive factors, the psychologist opined that he now believes the individual has achieved adequate evidence of rehabilitation from his two disorders, Alcohol Dependence and Opioid Dependence. *Id.* at 137. He testified that the individual has the mechanisms in place to be successful and further testified that the individual's prognosis is good and his risk of relapse is low. *Id.* at 140.

After reviewing all of this testimony, I agree with the DOE psychologist that the individual's risk of relapse is acceptably low, and that his conditions do not currently cause a significant defect in his judgment and reliability. As an initial matter, the individual, through his most recent inpatient treatment program, has confronted the issues of his past that significantly contributed to his alcohol and drug use. The individual described this treatment program as "life changing" and now understands the consequences of his past behavior. As the DOE psychologist stated, the individual has the mechanisms and persons in place to support his sobriety. In addition, the individual no longer has the desire or urge to drink or use drugs and is committed to abstaining in the future. I am convinced that the individual is adequately rehabilitated from his alcohol and drug problems. For these reasons, I find that the individual has successfully addressed the DOE's security concerns under Criteria (H) and (J).

B. Criteria (K) and (L) and the Bond Amendment

I reach a similar conclusion with regard to Criteria (K) and (L) and the Bond Amendment. The *Adjudicative Guidelines* that pertain to the individual's abuse and illegal use of the prescription medication Oxycodone from 2010 to April 2015, as well as his use of other illegal drugs, all provide that the isolated nature of the conduct, unusual circumstances leading up to the conduct, and the likelihood that the conduct will not be repeated, can act as mitigating factors. *See Adjudicative Guidelines E, H and J.*

The individual abused and illegally used prescription medication Oxycodone by taking 80 to 100 milligrams of the drug every day. He initially took Oxycodone in smaller doses to address his chronic back pain, but then became addicted to the drug and increased his usage. During the hearing, the individual testified that during his June 2015 inpatient treatment program, he confronted the issues that contributed to his drug and alcohol abuse, including the death of his father and his abusive stepfather. The individual testified that he had a “spiritual awakening” during treatment and is now fully accountable for his actions. Considering these facts, I conclude that the individual’s abuse and illegal use of prescription Oxycodone happened under such circumstances that are unlikely to recur in the future and his use of illegal drugs in the past occurred so long ago that it does not cast doubt on the individual’s reliability, trustworthiness or good judgement; and to the extent that the behavior raised security concerns under Criterion K, I conclude that such concerns have been successfully resolved. I further conclude, for the same reasons, that the individual is not “an unlawful user of a controlled substance or an addict,” within the meaning of the Bond Amendment. *See id.*; *Personnel Security Hearing*, Case No. TSO-0938 (2010).

Similarly, the concerns raised under Criterion L are incidents of criminal conduct tied to the individual’s alcohol and drug abuse, including the individual’s April 2015 DUI. There is ample evidence in the record establishing that the individual is a very honest, reliable, and trustworthy person, both professionally and personally, who can be relied upon to exercise good judgment, and who follows laws and rules. *See, e.g.*, Tr. at 13, 34, 53, 61, 67 and 76 (testimony of individual’s son, sister, foreman, AA sponsor and co-workers/friends). In addition, there is evidence of successful rehabilitation from the individual’s two disorders, Alcohol Dependence and Opioid Dependence. I believe the individual’s criminal conduct occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on his future honesty, reliability and trustworthiness. For these reasons, I find that the individual has resolved the Criterion L concerns cited in the Notification Letter.

V. Conclusion

I find that no valid security concerns remain regarding the Bond Amendment and Criteria (H), (J), (K) and (L). I therefore conclude that the individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual’s security clearance should be restored. Any party may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: June 30, 2016