

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual presented the testimony of two witness and testified on her own behalf. The DOE Counsel presented one witness. The LSO submitted eight exhibits into the record; the individual submitted eight exhibits as well. The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standards

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring the individual’s 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 individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s 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 am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

III. 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 in the letter specifically cites Guidelines F, H, and I.

Guideline F addresses financial concerns. The “[f]ailure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations,” which “can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Guideline F at ¶ 18. As a basis for invoking Guideline F, the Notification Letter cites the individual's collection accounts, which total \$27,843.00, and her personal financial statement that indicates she is overextended by \$831.00 each month. Ex. 1 at 3.

Guideline H concerns, in pertinent part, the misuse of prescription drugs. The misuse of prescription drugs “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.” Guideline H at ¶ 24. As support for invoking Guideline H, the Notification Letter cites the report of the DOE consultant psychologist’s (“DOE Psychologist”) conclusion that the individual is dependent on opioid buprenorphine and meets the criteria for Opioid Dependence and Sedative, Hypnotic, or Anxiolytic Abuse without adequate evidence of rehabilitation or reformation. Ex. 1 at 4.

Guideline I concerns psychological conditions and provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness”. Guideline I at ¶ 27. As support for invoking Guideline I, the Notification Letter cites the report of the DOE Psychologist which concludes that the individual's personality tendencies of avoidance can impair judgment, reliability, and trustworthiness. Ex. 1 at 4. The Notification Letter also cites the DOE Psychologist's conclusion that the individual's Opioid Dependence, with Physiological Dependence, on Agonist Therapy and Sedative, Hypnotic, or Anxiolytic Abuse can impair judgment, reliability, or trustworthiness. *Id.*

IV. Findings of Fact

Prior to her August 2016 PSI, the individual had a bankruptcy and three PSIs in the early nineties. Ex. 3 at 1. At the time of the individual's August 2016 PSI, she had six accounts in collections: three medical accounts that totaled approximately \$269.00 and three U.S. Department of Education accounts that totaled approximately \$27,575.00. Ex. 5 at 1. She lived with and supported her two unemployed adult children and her disabled husband. *Id.* Her monthly expenses exceeded her monthly income by approximately \$800. Ex. 1 at 3.

The individual also has a history of using prescription drugs. She started taking Suboxone around 2011 because of knee osteoarthritis which required surgery. Ex. 8 at 31. At the time of diagnosis, the individual was too overweight for the procedure, so she was prescribed hydrocodone for the pain. *Id.* Thereafter, she received Oxycodone and Oxycontin from doctors at a pain management clinic. *Id.* While there, the clinic consistently increased her prescription dose

to manage the individual's pain. *Id.* The individual continued to receive treatment at the pain clinic until the clinic closed. *Id.* At some point, the individual realized that she was "addicted" and "wanted off" the Oxycodone and Oxycontin. *Id.* Her primary care physician recommend that she stop taking Oxycodone and Oxycontin, but the individual was concerned about withdrawal symptoms, and she obtained a prescription for Suboxone instead. *Id.* at 31-32. Since 2012, the individual has been taking Suboxone to manage her pain, *id.* at 32, without a plan for reaching a weight that will allow her to undertake knee surgery. *Id.* at 48. She has never taken more medication than prescribed. *Id.* at 32. Moreover, she never obtained the medication illegally. *Id.* at 41.

In addition to pain management, the individual has a history of using prescription drugs for her mental health. Besides her primary care physician, the individual received counseling and treatment from a psychologist with prescriptive rights. *Id.* at 50. She has had several prescriptions for anxiety and depression, which included Bupropion, Duloxetine, Alprazolam, and Abilify. *Id.* at 45.

As a result of the 2016 PSI, the DOE Psychologist evaluated the individual and determined that she met the criteria for Opioid Dependence and Sedative, Hypnotic, or Anxiolytic Abuse. The DOE Psychologist also concluded that the individual's personality tendencies of avoidance and dependency have impaired her judgment regarding finances, the treatment of her depression and anxiety, and her prescription medication use; and the same personality tendencies can impair her judgment, reliability, and trustworthiness. Ex. 4 at 12. The DOE Psychologist concluded that in order to demonstrate rehabilitation from the above conditions, the individual would require a specific treatment plan for titrating off Suboxone, which includes addiction education and counseling and behavior therapy; medication monitoring; regular individual counseling; and group counseling and education for at least six months. *Id.*

V. Analysis

At the hearing, the individual did not dispute the allegations in the Notification Letter. Instead, she attempted to demonstrate, through her testimony and that of her witnesses, that she had taken steps to resolve the DOE's security concerns.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Guideline F: Financial Concerns

Conditions that can mitigate financial concerns include a finding that “there are clear indications that the problem is being resolved or is under control” and “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Guideline F at ¶ 20 (c)-(d). Here, the individual provided significant evidence to demonstrate that her financial problems are under control and she is continuing to make good-faith efforts to resolve her debts. First, she provided evidence that she satisfied her outstanding medical debt by paying every medical bill listed in the DOE’s Notification Letter. Tr. 25-26; Ex. G. She then provided evidence that she has addressed her education loan debt by paying the company an initial lump sum of over \$2,000 and scheduling payments for the remainder. Tr. at 27. She also provided evidence the she has consistently made monthly payments to the student loan creditor under the payment schedule. Ex. F. Furthermore, she testified that she has the current ability to pay all of her debt, and she provided a financial statement reflecting the same. Tr. at 37-38; Ex. H. The individual also provided a recent credit report that lists all of her credit accounts (aside from the aforementioned student loans) and indicates that all of her credit accounts are current. Ex. G. Further still, she explained the steps that she took to gain control of her financial status. The individual received and responsibly used a serendipitous inheritance to make the lump sum payment to her student loan creditors. Ex. 2 at 1. She negotiated with a kidney foundation to pay for the family’s significant Medicaid premiums. *Id.* Her children have been providing significant care for her husband, which allows the individual to focus on providing for the family. Tr. at 34. In addition, she has decreased her 401k contributions to increase her take-home pay. Ex. 2 at 1. As a result of her efforts, not only is the individual current with her credit accounts, but she has a significant monthly surplus. Ex. H. Considering these facts, I conclude that the individual provided sufficient evidence to resolve the DOE’s security concerns under Guideline F.

B. Guideline H: Drug Involvement

Notwithstanding the conclusion that the individual mitigated the security concerns under Guideline F, I must still consider whether the individual poses a risk to national security under Guideline H as a result of her prescription drug use. Conditions that may mitigate security concerns under Guideline H include finding that the behavior “happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Guideline H ¶ 25 (a). During the hearing, the individual provided sufficient evidence to resolve the DOE’s concerns regarding her use of prescription drugs.

First, the individual provided evidence that she has significantly reduced her use of Suboxone, and she has created a plan to obtain knee surgery. The individual testified that she originally received pain medication to treat physical discomfort, and as her tolerance increased, the pain clinic responded by prescribing her higher doses. Tr. 45-46. Before she knew it, she was at the highest dose of Oxycontin and Oxycodone. *Id.* at 46. The individual also testified that she did not follow her primary care physician’s recommendation of a two month titration schedule to end the drug use because she was concerned about experiencing a lot of pain. *Id.* at 48. Furthermore, she testified that when she started taking Suboxone instead of Oxycontin and Oxycodone, she did not realize that Suboxone was an opiate. *Id.* at 49. Instead, she relied upon the explanation that Suboxone would replace the need for Oxycodone and control the pain without any “high,” and while it was addictive in its own right, it would be easier to stop. *Id.* at 49-50. However, since

she received the DOE's Notification Letter, she has significantly lowered her Suboxone use from the highest allowable dose to half the amount within three months. *Id.* at 51. Now, the individual's timeframe for completely ending her use of Suboxone is six months. *Id.* at 53. She also indicated that she is aware that her pain will increase, and she may use the pain as a motivator to lose weight. *Id.* at 52. In furtherance of her goal, she has been exercising to strengthen her leg muscles and she is trying to lose fifty pounds. *Id.* at 59. Once she loses fifty pounds, she will ask her doctor for another surgery evaluation. *Id.* at 59.

The individual testified that she has never experienced any problems with her judgment or thinking as a result of taking the above medication *Id.* at 53. She stated that it does not make her sleepy, and she has never felt different or experienced a high. *Id.* at 54. Both of her work colleagues testified that she is a reliable person. *See id.* at 14, 21.

The individual also provided evidence to demonstrate that she has reduced her use of the other prescription drugs. She provided a list of her prior medications and a list of her current medications; she now takes eleven prescriptions instead of the fifteen she was taking at the time of her August PSI. Ex. C; Ex. D. She testified that she does not feel any different since reducing her medications, which included removing Alprazolam. Tr. at 61.

Finally, the DOE Psychologist provided evidence to mitigate the DOE's security concerns. The DOE Psychologist testified that she was impressed with the individual's progress. *Id.* at 65-66. Originally, the DOE Psychologist was concerned with the individual's prescribed mix of sedatives, which can affect attention, concentration, and judgment. *Id.* at 65. The DOE Psychologist explained that taking Suboxone, Alprazolam, Zolpidem, and Methocarbamol in the evening can create a mental condition which can affect judgment. *Id.* at 65. However, after hearing the individual's testimony, specifically with regard to the change in her current medications, the DOE Psychologist concluded that the diagnosis of Sedative, Hypnotic or Anxiolytic abuse no longer applied to the individual. *Id.* at 70. Furthermore, the DOE Psychologist concluded that the individual's plan to continue reducing her Suboxone use, with the goal of complete cessation, mitigated the DOE Psychologist's concern regarding the individual's opioid dependence. *Id.* at 70-71.

Based on the foregoing, the individual has met her burden to establish that she is not a security risk under Guideline H. The individual's drug use, specifically Suboxone, occurred as a result of a medical condition that justified the prescription of medication for pain relief. At all times, the individual was under the care of a medical professional, and she never used more than the prescribed amount. *See supra* at IV. The individual also testified that the medication did not affect her judgement, and this testimony is supported by the observation of her colleagues. Furthermore, the individual significantly reduced her use of Suboxone, with the goal of complete cessation, after learning the true nature of the medication; she also reduced her use of other prescribed medications—the combination of which concerned the DOE Psychologist. The individual also took positive steps to strengthen her knee to address the underlying problem, and she demonstrated goal-focused judgment by indicating that she can use any resultant increase in pain as a motivator for reaching her six-month weight-loss goal. Finally, the individual's progress, planned cessation of Suboxone, and reduction in total medications mitigated the DOE Psychologist's concerns regarding her prescription drug use. Consequently, it does not appear

that the circumstances that resulted in the Guideline H security concerns are likely to recur, and the individual's current state does not cast doubt on her reliability, trustworthiness, or good judgement. Therefore, I find that the individual has resolved the DOE's security concerns under Guideline H.

C. Guideline I: Psychological Condition

Lastly, I must consider the security concerns the DOE brought forth under Guideline I. Under Guideline I, an individual may mitigate security concerns by demonstrating that "there is no indication of a current problem." Guideline I ¶ 29 (e).

The DOE Psychologist's opinion that formed the basis of the DOE's security concerns under Guideline I is founded upon (1) the individual's diagnosed opioid dependency and Sedative, Hypnotic, or Anxiolytic abuse and (2) the individual's personality tendencies of avoidance, which can impair judgment, reliability, and trustworthiness. Ex. 4 at 11; Ex. 1 at 4. In other words, the Guideline I security concerns are meshed with the previously discussed bases for the Guideline F and Guideline H security concerns.

As discussed above, the DOE Psychologist concluded that the individual no longer fits the diagnosis for prescription drug dependency or abuse. Since the diagnosis no longer applies to the individual, I find that "there is no indication of a current problem" linked to her prescription drug use. The individual has therefore carried her burden to sufficiently mitigate the first DOE basis for invoking Guideline I. However, I must still determine whether the individual has mitigated the concerns under the second basis, which are related to her personality tendencies.

It is important to note that the DOE Psychologist's concerns regarding the individual's personality tendencies were founded upon the individual's "efforts to avoid situations and information which increase her anxiety." Ex. 1 at 4; Ex. 4 at 12. As discussed above, the individual presented significant evidence to demonstrate that she has addressed her financial jeopardy. Furthermore, the evidence discussed above demonstrates the substantial steps that she has taken to address the security concerns founded upon her prescription drug use. As a result, the DOE Psychologist concluded that the individual's prescription drug use no longer presents a diagnosis of substance dependency. In other words, the evidence demonstrates that the individual has taken great efforts to directly confront and address the issues which, according to the DOE Psychologist, increase her anxiety. Finally, and perhaps most importantly, after considering the testimony and evidence presented at the hearing, the DOE Psychologist testified that "as it stands now I would consider my concerns mitigated" Tr. at 73. Accordingly, I find that the individual carried her burden to demonstrate that "there is no indication of a current problem" as it relates her personality tendencies. I therefore find that the individual has resolved the DOE's security concerns under Guideline I.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guidelines F, H, and I. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to resolve the security concerns. I therefore find that restoring the individual access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should restore the individual access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals

Date: August 30, 2017