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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: September 9, 2019)	Case No.: PSH-19-0053
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_____)	

Issued: December 5, 2019

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude 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 security clearance. During a background investigation, an investigator became aware of derogatory information that cast doubt on the Individual’s fitness to hold a security clearance. As a result, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in September 2018. Ex. 5. Due to the unresolved security concerns, the LSO informed the Individual in a Notification Letter dated August 5, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised concerns under Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines and the Bond Amendment. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I

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.

subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted six numbered exhibits (Exhibits 1-6) into the record. The Individual tendered eleven exhibits (Exhibits A-K). Both the Individual and his wife testified. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetical or numeric designation. The hearing transcript in the case will be cited as “Tr.”, followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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). 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 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 individual is afforded a full opportunity to present evidence supporting his 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline H of the Adjudicative Guidelines and the Bond Amendment. Ex. 1. Guideline H relates to the illegal use of controlled substances, including the misuse of prescription and non-prescription drugs. Guideline H at ¶ 24. Substance misuse raises concerns about an individual’s reliability and trustworthiness because such use may lead to physical or psychological impairment and raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. *Id.* 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 citing Guideline H and the Bond Amendment, the LSO relied upon the Individual’s admission during the PSI that, in late March or early April 2018, he “unlawfully used Tylenol-3,” a controlled substance, which was not prescribed to him. Ex. 1.

IV. Findings of Fact

The Individual admitted to the allegations contained in the summary of security concerns, but denied that he was addicted to drugs or a habitual user. Ex. 2; Tr. at 13. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

At the hearing, the Individual explained that, in late March of 2018, he underwent an unexpected root canal dental procedure. Tr. at 19, 23; Ex. B. Following the procedure, his dentist failed to prescribe him any medication, and began experiencing “significant pain” the following evening. Tr. at 21. He utilized over-the-counter ibuprofen and acetaminophen, but those medications were not effective in mitigating the pain. *Id.* The Individual and his wife considered making a visit to the emergency room, but he felt that the emergency room was “the wrong place to go for a toothache.” *Id.* at 27. Seeing the Individual in pain, his wife offered him a hydrocodone/acetaminophen tablet (hydrocodone) that she had left over from her own a surgical procedure.² Tr. 13, 21, 25, 25; Ex. D. The Individual took one tablet, and it lessened the pain to a “manageable level.” Tr. at 21, 26. The Individual noted that the hydrocodone did not produce any side effects, and he did not get “high.” *Id.* at 26-27. He solely used the medication to ease his pain, the “common use” of the prescription. *Id.* at 54-55; Ex. D.

The morning after taking the hydrocodone, the Individual testified that his pain was better, and he was able to manage his symptoms with over-the-counter medications. *Id.* at 22, 27. The Individual acknowledged that taking his wife’s prescription medication was a mistake and a lapse in judgement due to the pain he was suffering. *Id.* at 14, 28. He indicated that he very much regretted the decision, and he would not make the mistake again. *Id.* at 28. He further pointed out that he had no intention of hiding this mistake from DOE and voluntarily revealed the information during the course of a routine security clearance reinvestigation. *Id.* at 17.

The Individual’s wife (Wife) testified on his behalf. The Wife recalled the events that led up to the Individual taking the hydrocodone tablet, and her story was consistent with that of the Individual. *See id.* at 61-62. She stated that she offered the Individual the medication because she was used to being a “caregiver,” and the hydrocodone was “a solution that was available at the time.” *Id.* at 71. She noted, however, that this was “not something that [she] would choose to do again.” *Id.* The Wife testified that the hydrocodone was no longer in their home, and that she and the Individual gathered all of their unused medications and took them to a pharmacy for proper disposal. *Id.* at 65. She verified that the Individual is not a drug addict, does not use illegal drugs, and after 22 years of marriage, she had never observed him use illegal drugs or prescribed drugs, other than for their medically intended use. *Id.* at 14, 68, 70.

V. Analysis

Misuse of a prescription medication is a condition that can raise a security concern and disqualify an individual from holding a security clearance. *See* Guideline H, ¶¶ 24-25. Such concerns can be mitigated by showing that: (a) the behavior was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on an individual’s current reliability, trustworthiness, or judgment;

² The Individual noted that although he told the investigator he took Tylenol #3 (a combination of acetaminophen and codeine (a narcotic)), he was mistaken as to the name of the medication. Tr. at 13, 25, 47. In actuality, the medication was a combination of hydrocodone (a narcotic) and acetaminophen. Ex. D.

or (b) an individual acknowledges his or her drug involvement, provides evidence of actions taken to overcome this problem, and has established pattern of abstinence, including dissociating from drug-using associations, avoiding the environment where he or she used drugs, and providing a signed statement of intent to abstain from all drug-involvement. *Id.* at ¶ 26(a), (b).

In this situation, I conclude that the Individual's use of the hydrocodone was an isolated incident brought about by a single, pain induced lapse in judgment. I see nothing in the record that would indicate that the Individual regularly engages in substance misuse, illegal use of controlled substances, or is addicted to drugs. Although the Individual improperly used a medication that was not prescribed to him, he used it in a manner consistent with its intended purpose, did not abuse it, and properly disposed of it once realizing and acknowledging his mistake. The Individual submitted the negative results of a voluntary drug test,³ and he demonstrated great candor in volunteering his use of the medication during a routine security clearance investigation, without prompting. Ex. H; Tr. 17, 29. Further, he has committed to abstaining from "all drug involvement and substance misuse." Ex. K. I cannot conclude that this one isolated impugns the Individual's reliability or trustworthiness for the purposes of maintaining his security clearance.

For the foregoing reasons, I find that the Individual has mitigated the security concerns associated with Guideline H. In light of the infrequency and character of the Individual's drug use, I also find that, for purposes of the Bond Amendment, the Individual is not now a user of illegal drugs nor is he an addict.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concern associated with Guideline H and the Bond Amendment. Therefore, I conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

³ This drug test was conducted in October 2019. Ex. H.