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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: February 11, 2021) Case No.: PSH-21-0013
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Issued: April 30, 2021

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ 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 should be granted a security clearance.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires possession of a security clearance. As part of the application for access authorization, the Individual completed a Questionnaire for National Security Positions form. Therein, she disclosed prior illegal drug use and drug-related arrests. As a result, the DOE Local Security Office (LSO) requested that the Individual receive a psychiatric evaluation from a DOE-consultant psychiatrist (“Psychiatrist”). After the evaluation, the Psychiatrist provided a report that included his opinion that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Stimulant Use Disorder Amphetamine Type – Severe.

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

In a letter dated March 2, 2020 (“Notification Letter”), the LSO informed the Individual that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the derogatory information raised security concerns under Guideline H and Guideline J of the Adjudicative Guidelines.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of six witnesses and testified on her own behalf. The LSO presented the testimony of the Psychiatrist. The Individual submitted eleven exhibits, marked Exhibits A through L.² The LSO submitted ten exhibits, marked Exhibits 1 through 10.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline H (Drug Involvement and Substance Misuse) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for suspending the Individual’s security clearance process. Ex. 1.

Guideline H provides that illegal use of controlled substances “can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 24. Conditions that could raise a security concern include “illegal possession of a controlled substance . . . or . . . drug paraphernalia” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of substance use disorder[.]” *Id.* at ¶ 25(d). The Notification Letter cited, in part, the following information: the Psychiatrist’s conclusion that the Individual meets the DSM-5 criteria for Stimulant Use Disorder Amphetamine Type – Severe, in sustained remission, without adequate evidence of rehabilitation or reformation; and, between 2012 and 2013, the Individual was arrested and charged with drug-related offenses on four separate occasions. Ex. 1 at 5. Each drug-related offense involved her possession of a controlled substance, or drug paraphernalia, or both. *Id.* The above allegations justify the LSO’s invocation of Guideline H.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including . . . an admission[] and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 30(b). The Notification Letter recited sixteen separate instances from 2006 to 2013 of the Individual being arrested, cited, or charged with criminal

² The Individual’s exhibits do not include an Exhibit C.

³ The LSO’s exhibits were combined and submitted in a single, 288-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This decision will cite to the LSO’s exhibits by reference to the page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

offences that range from minor traffic violations to, more recently, possession of drugs, drug paraphernalia, and stolen property. Ex. 1 at 6-7. The above allegations of criminal activity justify the LSO's invocation of Guideline J.

III. REGULATORY STANDARDS

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) (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 or 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. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The record in this case includes the Individual's written response to the Notification Letter. Therein, she stated that she attended Narcotics Anonymous (NA) the first year of her sobriety, found freedom from her addiction after attending a faith-based women's renewal weekend ("Christian Renewal"), and thereafter began going to church and reading the Bible on a regular basis. Ex. 2 at 9. She explained that her arrest record was the result of her youth and her use of narcotics. *Id.* She reported that she "got sober" in April 2014 and has not been involved in any drug-related incidents since that date. *Id.* She stated that she has disassociated herself from anyone who uses illegal drugs. *Id.* She further stated that, since becoming sober, she received her Graduate Equivalency Degree (GED) and began taking online courses to receive an associate degree. *Id.* She also explained that she had begun taking an active role in helping to plan and run future Christian Renewals, which occur every six months. *Id.*

The record also includes the Psychiatrist's report, which documents his evaluation and diagnosis of the Individual. During the evaluation, the Individual stated that she had used methamphetamine intravenously from 2012 through April 2014. Ex. 7 at 28, 29. In 2014, she started attending NA

meetings, two or three times per week, and going to church. *Id.* at 28. She stopped attending NA in 2015. *Id.* at 28. She explained that she stopped using illegal drugs because she did not like the lifestyle, it damaged her family, she lost contact with her children for five years, and she did not have employment or her own transportation. *Id.* at 27, 29. She also stated that she no longer contacts her mother because of her mother's current use of methamphetamines. *Id.* As part of her psychiatric evaluation, the Individual submitted to a drug test; the results were negative for illegal substances, including methamphetamines. *Id.* at 35, 47.

At the conclusion of the report, the Psychiatrist opined that, while the Individual's Severe Stimulant Use Disorder was in Sustained Full Remission, there was inadequate evidence of rehabilitation because she had not completed treatment nor had she addressed the underlying cause of her addiction. *Id.* at 35. However, the Psychiatrist credited the Individual with starting the reformation process by "understanding and addressing her addiction." *Id.* at 36. Finally, the Psychiatrist recommended that, due to the severity of the addiction and its consequences, the Individual should (1) remain abstinent from methamphetamines for another 12 months, (2) successfully complete her employer's Employee Assistance Program (EAP) treatment program, with random urine drug screens as required by EAP, (3) complete 12 months of documented NA meetings and show documented evidence of working the NA steps with a sponsor, and (4) address the underlying causes of her addiction through both the EAP program and NA participation. *Id.*

At the hearing, a friend from the Individual's church ("church friend") testified. The two met after the Individual ceased using drugs. Tr. at 15. The church friend participates in the Christian Renewal program with the Individual and witnessed the Individual improve herself, her resiliency, and her relationship with God. *Id.* at 21-22. The church friend testified that the Individual is trustworthy, diligent, and reliable. *Id.* at 28. The church friend also has observed the Individual reaching out to the Christian Renewal community for support during difficult times instead of relapsing back into addiction. *Id.* at 23-24, 33-34. Furthermore, the church friend witnessed the Individual taking an active role during Christian Renewal weekends by delivering presentations on her challenges and how God helped her overcome addiction. *Id.* at 25-26. Lastly, the church friend testified that the Individual has stated that she viewed NA as a steppingstone to God and the Christian Renewal community. *Id.* at 26.

A close friend of the Individual ("close friend"), who witnessed the Individual's struggle with addiction from the beginning, also testified. Tr. at 40. She testified that the Individual is "totally changed . . . from where she was." *Id.* at 43. The close friend confirmed that the Individual "got clean" in April 2014, has maintained employment, and is trustworthy. *Id.* at 40, 41. The close friend testified that the Individual has a great support system and confirmed the Individual disassociated from the people in her past who used drugs. *Id.* at 42. The close friend testified that she is confident that the Individual had not relapsed because she has not observed the undependable behavior that accompanied the Individual's prior drug use.⁴ *Id.* at 47.

Next, the Individual's attorney testified. The attorney represented her for some minor criminal issues and as she worked through family court to regain a relationship with her children. Tr. at 51,

⁴ The Individual's children's paternal grandmother, with whom the Individual lived during the Individual's period of addiction, similarly testified to observing the physical and behavioral change that accompanied the Individual's sobriety and her subsequent disassociation from people who use drugs. Tr. at 98, 101, 106.

52, 63. He recalled the Individual submitting to a hair follicle drug test as part of the family court process and stated that the test came back negative for illegal drugs.⁵ *Id.* at 64. He corroborated her sobriety and testified that he would know if she had relapsed because she would have “disappear[ed].” *Id.* at 59. He also testified that she had been candid when providing information during his representation of the Individual. *Id.* at 60.

A coworker of the Individual testified that she and the Individual became friends in 2018 while completing training for their current employment. *Tr.* at 113. The coworker stated that the Individual is honest and produces high-quality work. *Id.* at 116-17. She also testified that the Individual took college courses through the employer and maintained good grades. *Id.* at 118.

The Individual provided the following hearing testimony. She quit using methamphetamines “cold turkey” after finally realizing that her actions had cost her any relationship with her children. *Tr.* at 69-70. She started NA within the first days of her sobriety. *Id.* at 70. During that time, she chaired some meetings, obtained a sponsor, progressed through the early “steps,” and learned “a lot about addiction” and “how it can be passed down from generation to generation.” *Id.* at 70, 72. It caused her to reflect on how her own childhood impacted her path to addiction. *Id.* at 72.

In October 2014, after about six months of sobriety and NA, the Individual went on her first Christian Renewal. *Id.* at 71. She then stopped attending NA because she believed that her involvement in the church and the Christian Renewal released her from her addiction. *Id.* at 80. During her Christian Renewal weekends, she shares her story with over a hundred other people. *Id.* at 78. She also interacts with the related community online. *Id.* After making significant strides in her recovery, she was able to reunite with her children in 2018. *Id.* at 76. She currently enjoys rights to unsupervised visitation. *Id.* at 75.

She also currently maintains healthy boundaries with her mother and sister, who both still use illegal drugs, by restricting contact to phone conversations and refusing to provide them money. *Id.* at 68-69. She does not associate with people with whom she used to use illegal drugs. *Id.* at 69. She recounted that her support system includes her friends, her grandmother, members of her church, and the Christian Renewal community. *Id.* at 78. She testified that she intends to maintain her sobriety indefinitely. *Id.* at 82.

Regarding the Psychiatrist’s report, the Individual confirmed that, other than remaining abstinent, she did not follow the report’s recommendations even though she understood that the Psychiatrist recommended that she “get more at the root of what the issues were for [her] addiction.” *Id.* at 79. She explained that her failure to participate in the EAP program was due to putting participation off, in part, because of the pandemic, and she stated that she is now willing to complete the program.⁶ *Id.* at 80, 84. She also explained that she decided not to reinstate NA because she believed that her faith, coupled with her discovery about the source of her addiction, freed her from addiction. *Id.* at 80.

⁵ The Individual testified that she requested the follicle drug test as part of her efforts to demonstrate her fitness to be reunified with her children. *Tr.* at 76.

⁶ The Individual also stated, in her closing statement, that she would have completed the EAP program if the program had been previously described to her in the same detail she received during the hearing.

In addition to the above, she testified that she has been able to maintain stable employment, further her education, refrain from any other criminal activity, and successfully recover from three major surgeries. *Id.* at 80, 82, 83. She also divorced from her husband because she believed the relationship was negatively impacting her ability to better herself. *Id.* at 89. Regarding her past criminal conduct, the Individual testified that she understands the importance of complying with the law and that her past criminal conduct was related to her addiction. *Id.* at 67, 86. She testified that she has enough tools and support to maintain her sobriety. *Id.* at 83.

The Psychiatrist testified after having the benefit of hearing the testimony of all of the witnesses. He stated that he found the testimony related to the changes that the Individual has made in her life to be positive but noted her failure to follow his recommendations. Tr. at 130. He opined that the Individual's participation in the Christian Renewal is a sufficient substitute for NA. *Id.* at 137. However, he stated his opinion that the Individual has many issues in her childhood and past that have not been addressed except by peer groups and peer support. *Id.* at 132. He further opined that, in addition to the family history of drug use, "[t]here are lots of negative messages and some patterns that she really doesn't want to look at because they are painful." *Id.* He stated that "to fully fill out her foundation for recovery," she needs to understand what it was that made her vulnerable. *Id.*

While he credited her seven-year sobriety, he stated that "in terms of the progression to become more capable as a person and more stable, it's not particularly that long." *Id.* at 133. He stated that the mental health aspect of the recommended EAP program is essential for her rehabilitation. *Id.* at 137. He testified that, given the severity of her condition, even though it has been in sustained remission, the Individual must remain vigilant because at her level of methamphetamine dependency, she cannot be cured; rather, she will have to continue to use all available tools to manage her condition. *Id.* at 140, 142.

However, when asked to give a current prognosis, the Psychiatrist testified that "her prognosis is good, especially if she successfully completes the [] EAP." *Id.* at 138. He also stated that it is unlikely she would relapse given her length of abstinence, which shows she has been doing many of the things that need to be done. *Id.* at 143. He also stated that, even if the Individual completed the EAP treatment program, a risk of relapse would always remain. *Id.* at 143-44.

After the hearing, the Individual filed several post-hearing submissions. She submitted a signed statement of her intent not to illegally use any drugs and her agreement that violation of the statement would constitute grounds for automatic revocation of any security clearance. Ex. J. She also submitted a letter drafted by an EAP counselor from her employer that reports that the Individual attended three EAP Counseling and Guidance Therapy sessions. Ex. L. The EAP letter reports that during the counseling sessions the Individual worked to process "her historical information which helped to understand the causes of those errors in her earlier judgment[,] and the Individual "appears now to have a more solid grasp of what happened," which "will help her to remain clean and sober." *Id.*

V. ANALYSIS

A. Guideline H Considerations

The Individual argued that the following mitigating condition apply to resolve the security concerns related to her past drug use:

- (b) The individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) Disassociation from drug-using associates and contacts;
 - (2) Changing or avoiding the environment where drugs were used; and
 - (3) Providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility[.]

Adjudicative Guidelines at ¶ 26.

In this case, the evidence demonstrates the she has satisfied the factors set forth above. First, the Individual consistently acknowledged her past illegal drug use. Second, the Individual provided strong evidence of the actions she has taken to overcome her addiction. The Individual not only attended NA immediately after entering sobriety, but she became meaningfully involved in church and the Christian Renewal program, which she credits with positively impacting her efforts to remain sober. I also find that her involvement went beyond mere attendance: she took a leadership role in NA during the year she attended, and she gave presentations at Christian Renewal weekends. Furthermore, the Individual provided evidence she completed three post-hearing EAP counseling sessions in which she gained further understanding of the reasons for her addiction. Further still, all evidence in the record indicates that the Individual has remained abstinent for seven years. Not only has her testimony been consistent throughout the process, it is supported by every witness who testified on the subject and by at least two negative drug tests, one of which occurred during her evaluation with the Psychiatrist. And, as a result of her significant effort, she successfully reunified with her children, which not only demonstrates positive action, but also increases my confidence that her children are a powerful motivator for her continued sobriety.

Furthermore, the evidence establishes that she dissociated from former associates with whom she would use drugs. She cut them out of her life and chose to instead surround herself with supportive friends, sober family members, and the membership of both her church and the Christian Renewal. She also remains vigilant regarding her mother and sister by restricting contact to protect herself from their potential negative influence. These actions also demonstrate that the Individual no longer places herself in environments where drugs are used.

Lastly, she provided a signed statement of her intent to abstain from all drug involvement and substance misuse and acknowledged that any future illegal drug involvement or misuse is grounds for revocation of her national security eligibility.

For the reasons discussed above, I conclude that the Individual has resolved the security concerns founded upon her past drug use.

In making my determination, I fully considered the Psychiatrist's reluctance to conclude that the Individual is rehabilitated based on his concern that she lacked the tools that could have been developed in an EAP treatment program. Unfortunately, the record is unclear whether the Individual's post-hearing completion of the EAP sessions would satisfy the Psychiatrist's concerns. However, what is clear is the Psychiatrist's opinion that no amount of treatment will cure the Individual's condition. In other words, additional treatment, at best, can only reduce the probability of relapse; there will always be a chance of relapse, regardless of how unlikely, even if the Individual completes a longer EAP program.⁷ That being said, the Psychiatrist himself gave her a good prognosis based on her low likelihood of relapse. And the likelihood should be lower still given her recent successful completion of her employer's recommended EAP sessions. Consequently, the Psychiatrist's reluctance to unreservedly conclude that the Individual is rehabilitated does not dissuade me from reaching my above conclusion.

B. Guideline J Considerations

The Individual argued that the following mitigating condition applies to resolve the security concerns related to her past criminal conduct:

- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, [] job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

I find the Individual presented significant evidence of her successful rehabilitation. First, seven years have passed since the Individual last illegally used drugs or faced criminal charges, which constitutes a significant passage of time without recurrence of criminal activity. Second, in that same timeframe, she obtained higher education by earning her GED and an associate degree, and she successfully completed the initial job training required for her current position. Third, the evidence in the record indicates she has maintained a good employment record since becoming sober. Finally, there is evidence of the Individual's constructive community involvement by her recurring participation in Christian Renewal weekends. For these reasons, I find the Individual has resolved the Guideline J security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines H and J of the Adjudicative Guidelines.

⁷ I note that the EAP only scheduled the Individual for the three treatment sessions she completed. Ex. K.

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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should be granted 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals