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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: April 2, 2021) Case No.: PSH-21-0039
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Issued: June 17, 2021

Administrative Judge Decision

Richard A. Cronin, Jr., 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's access authorization should not be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold access authorization. On January 28, 2013, the Individual signed a Questionnaire for National Security Positions (2013 QNSP) and certified that its contents were true, complete, and correct to the best of his knowledge and belief. Exhibit (Ex.) 10 at 33. In a section of the 2013 QNSP related to unlawful drug use, the Individual checked a box marked "No" in answer to a question concerning whether he had intentionally misused prescription drugs in the prior seven years. *Id.* at 27. In 2017 the Individual completed another QNSP (2017 QNSP) and denied having intentionally misused prescription drugs in the prior seven years. Ex. 9 at 32. However, a background check by the Office of Personnel Management (OPM) revealed that the Individual misused prescription pain medication from 2008 to 2017. *See* Ex. 5 at 2–3 (summarizing OPM's investigatory findings concerning the Individual's misuse of prescription pain medication and intentional failure to disclose this information on the 2013 QNSP and 2017 QNSP).

The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his misuse of prescription medication. Ex. 6. In his response to the LOI, the Individual admitted to using pain medication that was not prescribed to him from 2008 to 2017 and to intentionally failing

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.

to disclose that information on the 2017 QNSP. *Id.* at 6–7, 10–11. The Individual disclosed that he had stolen pain medication from family members and unlawfully purchased pain medication without a prescription, that law enforcement was summoned to his home multiple times as a result of his behavior while under the influence of pain medication, and that he had misused prescription medication while holding a security clearance despite knowing that his conduct was unlawful. *Id.* at 3–4, 10. The Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a clinical interview on July 30, 2019. Ex. 7 at 3. On August 12, 2019, the DOE Psychiatrist issued a Psychological Assessment (Report) in which he opined that the Individual met the diagnostic criteria for Opiate Use Disorder (OUD), Severe, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 11.

The LSO issued the Individual a letter in which it indicated that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. Ex. 1. In a Summary of Security Concerns attached to the letter (SSC), the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline H (Drug Use), and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 hearing. The LSO submitted ten exhibits (Ex. 1–10) into the record.² The Individual submitted five exhibits (Ex. A–E). The Individual presented the testimony of four witnesses, including his own, and the LSO presented the testimony of the DOE Psychiatrist.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for its determination that the Individual was ineligible for a security clearance. Ex. 1 at 1. “Conduct involving questionable judgement, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The SSC cited the Individual’s failure to disclose his misuse of prescription medication on the 2013 QNSP, on the 2017 QNSP, and to the OPM investigator. Ex. 1 at 1–2. The LSO’s allegations that the Individual deliberately concealed or omitted his misuse of prescription pain medication on two QNSPs and in his interview with the OPM investigator justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b).

The LSO cited Guideline H (Drug Use) of the Adjudicative Guidelines as another basis for its determination that the Individual was ineligible for a security clearance. Ex. 1 at 2–3. “The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose 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. The SSC cited the DOE Psychiatrist’s determination

² The LSO’s submissions refer to its intention to submit eleven exhibits. However, the LSO failed to submit its eleventh exhibit, OPM’s report of its background investigation of the Individual, and therefore this exhibit is not in evidence.

that the Individual met the diagnostic criteria for OUD, Severe, under the *DSM-5*, the Individual's admission to misusing prescription pain medication while holding a security clearance despite knowing that doing so was unlawful, the Individual's admission to obtaining prescription pain medication unlawfully, and the Individual's admission that law enforcement was summoned to his home on multiple occasions as a result of his conduct while under the influence of prescription pain medication. Ex. 1 at 2–3. The Individual's substance misuse, unlawful possession of a controlled substance, diagnosis with OUD by the DOE Psychiatrist, and misuse of prescription pain medication while granted a security clearance justify the LSO's invocation of Guideline H. Adjudicative Guidelines at ¶ 25(a), (c)–(d), (f).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the final basis for its determination that the Individual was ineligible for a security clearance. Ex. 1 at 3. "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. The SSC cited the following allegations with respect to the Individual's ineligibility for access authorization pursuant to Guideline J: the Individual admitted to using prescription pain medication not prescribed to him from 2008 to 2017, the Individual admitted to stealing prescription pain medication from his relatives, and the Individual unlawfully acquired prescription pain medication. Ex. 1 at 3. The LSO's allegations that the Individual engaged in criminal conduct justify the LSO's invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

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), 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.

IV. FINDINGS OF FACT

The Individual was prescribed Vicodin (a prescription opiate pain medication) in 2008 after undergoing knee surgery. Ex. C at 2. The Individual was prescribed pain medications for other injuries and medical conditions over a period of several years and developed an addiction to the pain medication. *Id.* at 2–3. Over time, the Individual began seeking pain medication in addition to that prescribed to him to satisfy his addiction. *Id.* at 3.

The Individual joined a United States military unit in 2013. *Id.* at 1. The Individual completed the 2013 QNSP in connection with his service. Ex. 10 at 33. The Individual checked a box on the 2013 QNSP marked “No” in answer to a question concerning whether he had misused prescription drugs in the seven years prior to completing the 2013 QNSP. *Id.* at 27. The Individual was granted a security clearance by the Department of Defense (DOD) in 2013. Ex. 9 at 33–34.

On May 4, 2017, the Individual completed the 2017 QNSP and certified that its contents were true, complete, and correct to the best of his knowledge and belief. *Id.* at 39. The Individual checked a box marked “No” in answer to a question concerning whether he had misused prescription drugs in the seven years prior to completing the 2017 QNSP. *Id.* at 32. An OPM investigator interviewed the Individual in February 2018 and the Individual denied any prescription medication misuse in the prior seven years. *See* Ex. 5 at 2 (summarizing derogatory information discovered during OPM’s background investigation of the Individual). However, OPM’s investigation uncovered multiple sources with knowledge of the Individual’s misuse of prescription medication. *See id.* at 3 (indicating that sources told an OPM investigator that the Individual was suspected of being under the influence of drugs at work and had stolen prescription medication from family members). The Individual admitted to his misuse of prescription medication during a follow-up interview with an OPM investigator in June 2018. *See id.* at 2 (summarizing derogatory information discovered during OPM’s background investigation of the Individual).

On April 30, 2019, the Individual submitted his response to the LOI issued to him by the LSO. Ex. 6 at 9. In his response to the LOI, the Individual indicated that he occasionally used pain medication that was not prescribed to him beginning in 2008 and that his use of pain medication escalated in 2013. *Id.* at 10. The Individual reported that he used pain medication “as often as [he] could acquire it” and that he had purchased prescription medication not prescribed to him and had obtained it by other means from others when he exhausted his prescribed pain medication. *Id.* at 2, 10. The Individual also disclosed that law enforcement officers were summoned to his home on two occasions as a result of his sending concerning text messages and behaving incoherently while under the influence of prescription pain medication. *Id.* at 10. The Individual admitted that he had intentionally omitted his history of prescription drug misuse when completing the 2017 QNSP and in his first interview with an OPM investigator, and noted that he “need[ed] this job for [his] family” and that truthfully disclosing his history of prescription drug misuse “would hinder [his] chances at receiving the security clearance required.” *Id.* at 6, 11.

The Individual met with the DOE Psychiatrist for a clinical interview on July 30, 2019. Ex. 7 at 3. The Individual told the DOE Psychiatrist that he became aware of his dependence on prescription pain killers in 2013, at which time he began stealing Percocet (an opiate prescription pain medication) from his grandmother to satisfy his addiction. *Id.* at 5. The Individual reported obtaining opiates through a variety of methods because he felt that he “needed opiates . . . to feel normal.” *Id.* The Individual reported that he last used opiates in November 2017 and that he had disclosed his opiate abuse to his family, friends, and supervisor. *Id.* at 11. The Individual reported using Ambien for insomnia and denied that he had told his physician about his opioid addiction. *Id.* at 4, 11.

The Individual provided samples for laboratory testing following the clinical interview. The Individual's urine screening was negative for traces of controlled substances. *Id.* at 7. The Individual's Phosphatidylethanol (PEth) test was positive for traces of the PEth biomarker at a level of 63 ng/mL. *Id.* at 6. According to the DOE Psychiatrist, this test result was consistent with higher than recommended alcohol consumption which "correspond[ed] to the top of the NIAA (National Institute of Alcoholism and Alcohol Abuse) 'low risk' category" *Id.* at 7.

In his Report, the DOE Psychiatrist concluded that the Individual previously met eight of the diagnostic criteria for OUD under the *DSM-5* within a twelve-month period, and accordingly concluded that the Individual met the diagnostic criteria for OUD, Severe. *Id.* at 10. The DOE Psychiatrist determined that the Individual's OUD was in sustained remission because he reported not misusing opioids for more than twelve months. *Id.* However, the DOE Psychiatrist opined that the Individual was neither rehabilitated nor reformed. *Id.* The DOE Psychiatrist recommended that the Individual abstain from opioids for an additional twelve months, complete a substance abuse program, including counseling or Narcotics Anonymous if not included in the substance abuse program, undergo at least three random urine screenings, and notify his physician of his OUD to facilitate adjusting his treatment and weaning him off of Ambien. *Id.* at 11–12.

On March 25, 2020, the Individual executed a statement of intent not to abuse any drugs and agreed that any illegal use of drugs would constitute grounds for automatic revocation of his security clearance. Ex. E at 15. Beginning on April 13, 2020, the Individual met with a Licensed Professional Counselor (Individual's Counselor) for a substance abuse assessment. *Id.* at 1, 5. The Individual's Counselor conducted a clinical interview of the Individual, administered the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF), and provided the Individual with "Sweat Patches" to measure for controlled substances. *Id.* at 1–4. At the conclusion of the evaluation period in June 2020, the Individual's Counselor opined that the Individual's negative drug testing, lack of withdrawal symptoms, open presentation, and valid responses on the MMPI-2-RF were sufficient to conclude that he did not meet any diagnostic criteria for a substance abuse condition and had overcome his opiate dependence. *Id.* at 4. The Individual's Counselor noted that the Individual demonstrated "an increasing tolerance of alcohol" and that "[s]erious consideration should be given to [the Individual's] use of alcohol as a coping mechanism." *Id.* The Individual's Counselor opined that the Individual would not qualify for substance abuse treatment in light of his lengthy abstinence from opiates but that he could benefit from participating in support groups to promote healthy living and individual counseling related to "developing coping strategies that would protect against risk for lapse or relapse." *Id.* at 4–5.

V. HEARING TESTIMONY

The Individual's Wife testified that she did not believe that the Individual was misusing any substances as of the date of the hearing. Tr. at 16. The Individual's Wife further testified that the Individual demonstrated reliability, trustworthiness, and good judgment in his family life and in meeting work obligations. *Id.* at 16–18. In her opinion, the Individual "always" demonstrated good judgment during the twelve years she has known him. *Id.* at 18–19. The Individual's Wife expressed the opinion that the Individual's misuse of pain medication was so minor that she had not noticed his problem and that the Individual's openness about his struggles with prescription drug misuse led her to believe that the Individual would not return to such misuse. *Id.* at 20–22. The Individual's Wife attributed the Individual's omission of his prescription drug misuse from the QNSP to the Individual's desire to improve his family's life due to the "tight" financial

circumstances they were experiencing in his prior position. *Id.* at 25. The Individual's Wife said that she learned of the Individual's prescription drug misuse in approximately 2016 and that prior to learning of the Individual's addiction she had attributed his occasionally unusual behavior to work-related fatigue. *Id.* at 25–27, 30–31. The Individual's Wife indicated that she would contact the Individual's mother and urge the Individual to obtain professional assistance if she perceived that he had resumed misusing prescription medication. *Id.* at 28.

The Individual's Counselor testified that the Individual retained her in April 2020 for a drug and alcohol assessment in preparation for the hearing. *Id.* at 35. The Individual's Counselor met with the Individual six times and indicated that their meetings were evaluative and not therapeutic. *Id.* at 47. The Individual disclosed during the assessment that he had misused prescription pain medication to manage pain and stress, but stopped using prescription pain medication in late 2017. *Id.* at 38. The Individual reported ongoing stress related to the adverse financial consequences of potentially losing his position with the DOE contractor and reported managing the stress by spending time with his family and working on household projects in lieu of pain medication. *Id.*

The Individual's Counselor testified that the Individual's willingness to discuss problematic behaviors and reasons for taking negative actions displayed honesty which caused her to believe that the information that he reported was accurate. *Id.* at 39–40. The Individual's Counselor testified that the Individual complied with the testing protocols for the assessment and that she had no doubts as to the validity of the results. *Id.* at 41–42. Regarding her prognosis for the Individual's recovery, the Individual's Counselor indicated that she did not “consider him at high risk for relapse at this point.” *Id.* at 43.

The Individual's Counselor testified that she was aware of the Individual's failure to disclose his history of abusing prescription pain medication on the 2017 QNSP and opined that his deception was unlikely to have been a symptom of his OUD as might be the case for a person minimizing ongoing drug abuse. *Id.* at 48–49. The Individual's Counselor opined that, although the Individual could enhance the probability of his avoiding a relapse through counseling, treatment for prescription drug misuse would be unnecessary considering the Individual's self-reported abstinence for several years. *Id.* at 56–57, 59–61. The Individual's Counselor also expressed the opinion that the Individual's “honesty and humility,” support from his family, and structured environment would support his recovery. *Id.* at 63–64. The Individual's Counselor acknowledged that her opinion was based on information she received as of June 2020 and that she assumed that the Individual had maintained his sobriety since that time. *Id.* at 64–65.

A childhood friend of the Individual (Childhood Friend) who communicates with the Individual electronically once or twice per year testified that he formed a positive opinion of the Individual's character and work ethic in their youth. *Id.* at 70, 72–74. The Childhood Friend indicated that the Individual told him about his prescription drug misuse in 2020 in the context of requesting that the Childhood Friend provide a character reference for him in connection with the adjudication of his eligibility for a security clearance, and that the Childhood Friend was unaware of the Individual's misuse of prescription drugs when it was ongoing. *Id.* at 78–79, 81.

The Individual did not contest any of the facts listed in the SSC. *Id.* at 123. The Individual testified that he decided to reveal his prescription drug misuse during his second interview with an OPM investigator. *Id.* at 87–88. The Individual acknowledged that his decision was partially motivated by the possibility that his prescription drug misuse might have been revealed during the background investigation. *Id.* at 100. The Individual testified that his mother learned that he was

misusing prescription drugs and had stolen pain medication from family, and that she confronted him about the behavior, but was “pretty forgiving” and wanted “to keep things secluded” so that others would not learn of his problem. *Id.* at 101–02, 106. The Individual indicated that his wife discovered his prescription drug misuse, confronted him, and directed him to stop in 2016 but that he had found it difficult to do so. *Id.* at 101–03. The Individual indicated that he believed that he and his wife were more “in tune with each other” than they had been in the past and that familial and financial stressors that distracted her in the past were no longer present. *Id.* at 107. Therefore, the Individual asserted that his wife and mother would act as more effective support for his abstinence from prescription drug abuse than they had in the past. *Id.*

The Individual acknowledged that he had received the Report in 2019 but did not pursue the counseling recommended by the DOE Psychiatrist on the advice of his counsel. *Id.* at 108. The Individual asserted, however, that he would do so if necessary for a security clearance. *Id.* at 94–95, 108–10. The Individual testified that he had talked to a pastor about his situation and had been advised to communicate more openly with his wife about his problems and to seek comfort in prayer. *Id.* at 90–91. The Individual indicated that he spoke with the pastor “no more than three” times about his problems and that the meetings were impromptu conversations rather than scheduled counseling. *Id.* at 103–04.

The Individual testified that he had abstained from prescription drug misuse for over three and one half years and could rely on his co-workers, family, and medical providers to support his recovery. *Id.* at 92–93. The Individual indicated that he had committed to abstaining from prescription drug misuse going forward and had executed a statement to that effect. *Id.* at 93; Ex. E at 15. The Individual testified that his former living environment contributed to his prescription drug misuse and that relocating to an area with more natural spaces and “wholesome” neighbors had been conducive to his recovery. Tr. at 93–94. The Individual acknowledged that he still possessed a security clearance granted by DOD and had not notified DOD of his prescription drug misuse. *Id.* at 118–19. When asked why he had not disclosed his prescription drug misuse to DOD, the Individual said, “I don’t have a good answer.” *Id.* at 119.³

The Individual testified that he had openly communicated his misuse of prescription drugs to his friends and family and that he was not at risk of blackmail or coercion regarding his former misuse of prescription drugs. *Id.* at 95–96. The Individual cited his past military service as indicative of his good employment record. *Id.* at 96–97. The Individual also testified that he had learned that his prior belief that he should “self-cope” with his problems, which he attributed to observing his father, was unhealthy and that he could rely on medical practitioners to help him. *Id.* at 110–11. The Individual attributed his improved coping skills without relying on pain medication to increased personal maturity and an improved relationship with his wife. *Id.* at 118. The Individual testified that he consumed alcohol three to four times weekly, including up to eight beers in a day on weekends, and that he became “buzzed” when he consumed more than two or three mixed drinks or more than four beers. *Id.* at 111–15. The Individual acknowledged that he increased his alcohol consumption following the clinical interview with the DOE Psychiatrist and attributed his increased alcohol consumption to having moved to a new home where he felt more comfortable relaxing and drinking with his wife. *Id.* at 116.

The DOE Psychiatrist testified that he diagnosed the Individual with OUD, Severe, and determined that the Individual was not rehabilitated or reformed at the time he issued his Report because of

³ The Individual testified that he was “not sure” if he was required to inform DOD of his prescription medication misuse but asserted that he had informed his unit commander. Tr. at 93, 150.

the severity and duration of the Individual's opioid addiction and because "he still had strong desire to use and still thought about the last time he used somebody else's opiates" as of the date of the clinical interview. *Id.* at 131–32. The DOE Psychiatrist initially opined that the Individual was "in the process of reformation" and that he should demonstrate five years of abstinence from misusing prescription drugs if he does not pursue counseling. *Id.* at 133–34, 137–40. However, upon further examination, he testified that he believed that the Individual had demonstrated reformation by developing an awareness of his substance abuse problem and abstaining from prescription pain medication. *Id.* at 147–48.

The DOE Psychiatrist opined that the Individual has a relatively low risk of relapse into prescription drug misuse if his self-reported three and one half years of abstinence was accurate. *Id.* at 141. However, the DOE Psychiatrist expressed the opinion that the Individual's escalating consumption of alcohol, which the DOE Psychiatrist believed might represent an alternative coping mechanism to replace opioids, presented a potential risk of compromising his recovery and presenting a clinical concern in of itself. *Id.* at 133–35, 141–42. The DOE Psychiatrist also expressed the opinion that the Individual had underlying, unaddressed anxiety and inadequate understanding of the root cause of his misuse of prescription medication. *Id.* at 136.

VI. ANALYSIS

A. Guideline E Considerations

The LSO's allegations that the Individual deliberately omitted relevant facts from two QNSPs and provided false or misleading information in an interview with an OPM investigator justify the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(a)–(b). The Individual does not contest the derogatory information under Guideline E listed in the SSC. Tr. at 123. The Adjudicative Guidelines provide the following seven conditions which may mitigate security concerns under Guideline E:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Id. at ¶ 17(a)–(g).

Mitigating conditions (b), (e), (f) and (g) are not applicable to this case because the Individual did not allege that he failed to disclose his prescription drug misuse on the advice of counsel, the Individual was not manipulated into the omissions, the Individual did not contest that the omissions occurred, and the LSO did not allege that the Individual's association with persons involved in criminal conduct raised security concerns.

Mitigating condition (a) is inapplicable because the Individual did not reveal his misuse of prescription pain medication until his second interview with an OPM investigator, by which time it appears that the OPM investigator had learned of the information through other sources. *Supra* p. 4 (discussing how OPM learned of the Individual's misuse of prescription medication from sources other than the Individual). Even if the Individual volunteered the information to the OPM investigator rather than being confronted with the information, he did so over one year after his omission on the 2017 QNSP and thus failed to promptly correct the omission. Adjudicative Guidelines at ¶ 17(a).

Mitigating condition (c) is not applicable because the Individual's omissions related to his prescription drug misuse are serious, recent, and occurred over many years. The Individual's concealment of his prescription drug misuse masked circumstances that potentially impaired his judgment and reliability, including a span of multiple years during which the Individual held a DOD security clearance and was aware that he was required to disclose his prescription medication misuse. In light of the seriousness of the risks to national security of failing to disclose addiction to prescription medication, and the Individual's concealment of his addiction for over five years, I find that the passage of time since the Individual's omissions is insufficient for me to conclude that they do not cast doubt on his reliability, trustworthiness, or good judgment. *Id.* at ¶ 17(c).

Mitigating condition (d) is also inapplicable. The Individual has acknowledged his lack of candor and taken steps to address his prescription drug misuse; however, I am not convinced that his omissions were attributable to causes that can be addressed through resolving his prescription drug misuse or that he will be forthcoming in the future if he perceives that he must choose between the interests of himself and his family, and those of national security. The Individual indicated in his response to the LOI that he failed to disclose his prescription drug misuse because of the importance of his job with the DOE contractor to his family's financial wellbeing and testified during the hearing that he was partially motivated to reveal his prescription drug misuse to the OPM investigator during the follow-up interview because he thought that the information might be revealed during the background investigation. *Supra* pp. 4, 7. The Individual's Counselor expressed the opinion that the Individual's lack of candor was unrelated to his OUD. *Supra* p. 6.

While the Individual appears to have made substantial progress towards addressing his prescription drug abuse, I am not convinced that the Individual's omissions were the product of symptoms of his OUD. Rather, the Individual's omissions, which persisted for months after his last use of opioids, appear to have been the product of calculated choices on the part of the Individual to hide derogatory information that compromised his eligibility for a security clearance. Under the circumstances, I am not convinced that the Individual will candidly disclose derogatory information on topics other than prescription drug misuse if they should arise and therefore conclude that mitigating condition (d) is not applicable. Adjudicative Guidelines at ¶ 17(d).

B. Guideline H Considerations

The Individual's unlawful possession and misuse of prescription opioids while holding a security clearance, as well as his diagnosis with OUD, present security concerns under Guideline H. *Id.* at ¶ 25(a), (c)–(d), (f). The Individual does not contest the derogatory information under Guideline H listed in the SSC. Tr. at 123. The Adjudicative Guidelines provide the following four conditions which may mitigate security concerns under Guideline H:

- (a) the behavior happened so long ago, was so infrequent, or 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;
- (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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Adjudicative Guidelines at ¶ 26(a)–(d).

The Individual misused prescription opioids on a frequent basis for years, hid this information from DOD despite possessing a security clearance, and resorted to unlawful means of obtaining opioids to satisfy his addiction. While the Individual denied misusing opioids since November 2017, I find that the passage of approximately three and one half years is insufficient for me to conclude that the Individual's use of opioids does not cast doubt on his reliability, trustworthiness, or judgment in light of length of time for which he misused opioids and the deceptive and unlawful behavior he exhibited as a result of his addiction. Therefore, I find mitigating condition (a) under Guideline H inapplicable in this case. *Id.* at ¶ 26(a).

The Individual has partially satisfied the second mitigating condition under Guideline H by acknowledging his misuse of prescription drugs, obtaining a substance abuse evaluation from the Individual's Counselor demonstrating several months of abstinence from opioid misuse, and providing a signed statement of intent agreeing to revocation of his security clearance in the event that he becomes involved with illegal drugs in the future. However, the Individual did not undergo random drug testing as the DOE Psychiatrist recommended, and the short-term substance abuse evaluation provided by the Individual's Counselor is not as strong evidence of a pattern of abstinence as the Individual might have proved through random testing or testing over a longer period of time.

In addition to the limited drug testing supporting his abstinence from opioid misuse, the Individual has not established a sufficient support network to aid him in his recovery and provided little evidence that he has disassociated from environments that contributed to his drug use. The

Childhood Friend cannot provide meaningful support in this regard in light of his limited contact with the Individual and his testimony that he was unaware of the Individual's opioid misuse until the Individual contacted him in preparation for the hearing. The Individual's Wife testified as to her intention to support the Individual's recovery, but also admitted to not recognizing the Individual's opioid misuse for years after he started using opioids on a heavy basis due to the Individual's deception and other demands on her attention. The Individual represented that he could rely on other family members, particularly his mother, to support his recovery. *Supra* p.7. However, the record contains concerning evidence that the members of the Individual's family may have misused opioids in the past. *See* Ex. 5 at 3–4 (indicating that a source revealed to OPM that the Individual's family members are "pain medication abusers" and that the Individual's brother-in-law supplied him with opioids). Absent testimony from any sources of support for the Individual besides his wife, and in light of the potential drug misuse by members of the Individual's family upon whom he would rely for support, I am not convinced that the Individual has established a sufficient support network to aid his recovery.

Even had the Individual presented more robust evidence as to his abstinence from opioid misuse and disassociation from drug-using individuals, I would still harbor concerns about the Individual's ability to avoid returning to substance misuse. The DOE Psychiatrist expressed concern that the Individual's escalating alcohol consumption is indicative that he is reliant on mood-altering substances and is substituting alcohol for opioids. Compounded with the limited drug testing offered by the Individual to prove his abstinence from opioid misuse, the lack of evidence of a support network, and the concerning record evidence that family members the Individual is relying on to support his recovery may have misused opioids themselves, I find that mitigating condition (b) under Guideline H is inapplicable. Adjudicative Guidelines at ¶ 26(b).

Mitigating condition (c) is inapplicable because the Individual has not provided evidence that he was prescribed opioids for a severe or prolonged illness. There is no indication in the record as to the severity of the knee injury for which the Individual was originally prescribed opioids or the length of time for which he was prescribed opioids for the injury. Likewise, there is no record evidence as to the severity of the Individual's subsequent injuries. Thus, I find mitigating condition (c) under Guideline H inapplicable. *Id.* at ¶ 26(c).

The final mitigating condition (mitigating condition (d)) is inapplicable because the Individual did not pursue treatment for his opioid misuse. The Individual's Counselor expressed doubt that the Individual would qualify for a formal substance abuse program in light of the duration of his claimed abstinence from opioid misuse. However, the Individual did not demonstrate any efforts to pursue any form of treatment, such as attending Narcotics Anonymous as recommended by the DOE Psychiatrist. Moreover, the DOE Psychiatrist's equivocating testimony as to the Individual's reformation and qualification of the Individual's prognosis in light of the limited drug testing demonstrating the Individual's abstinence is insufficient for me to find that the Individual has a favorable prognosis. Accordingly, I find that the Individual has not established the applicability of the fourth mitigating condition under Guideline H. *Id.* at ¶ 26(d).

The Individual has not sufficiently documented the duration of his claimed abstinence from opioid misuse through drug testing, has not pursued treatment or sufficiently established the presence of a support network upon which he can rely in his recovery, and has increased consumption of alcohol which the DOE Psychiatrist opined might be a means of compensating for opioids. The Individual has not established the applicability of any of the mitigating conditions under Guideline

H and, under the circumstances, I am not sufficiently convinced of the durability of the Individual's recovery to find that he has resolved the security concerns under Guideline H.

C. Guideline J Considerations

The Individual's admission to having used medication not prescribed to him from 2008 to 2017 and to having used unlawful methods to obtain pain medication raise security concerns under Guideline J. *Id.* at ¶ 31(b). The Individual does not contest the derogatory information under Guideline J listed in the SSC. Tr. at 123. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32(a)–(d).

Mitigating condition (a) is not applicable because the passage of approximately three and one half years since the Individual's last alleged criminal conduct does not outweigh the severity of his lengthy misconduct and deception while in possession of a security clearance. The Individual engaged in criminal conduct to satisfy his opioid addiction on many occasions over numerous years and, as discussed above, I am not sufficiently convinced of the durability of the Individual's recovery for me to conclude that the Individual's unlawful conduct is unlikely to recur. Thus, I find the first mitigating condition inapplicable. *Id.* at ¶ 32(a).

Mitigating conditions (b) and (c) are inapplicable because the Individual does not contend that he was pressured into the criminal conduct and it is uncontested that the Individual committed the alleged conduct. *Id.* at ¶ 32(b)–(c). Mitigating condition (d) is inapplicable because the passage of time without recurrence of criminal conduct is insufficient to mitigate the security concerns for the reasons noted above and the Individual has not established sufficient other evidence of rehabilitation for me to find the Individual's criminal conduct mitigated. *Id.* at ¶ 32(d).

For years, the Individual engaged in criminal conduct to support his addiction while possessing a security clearance, and I am not sufficiently convinced of the Individual's recovery for me to conclude that he will not engage in criminal conduct in the future. Thus, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline E, Guideline H, and Guideline J of the Adjudicative Guidelines. 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals