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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-21-0038
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Issued: July 8, 2021

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**Administrative Judge Decision**

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James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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.”<sup>1</sup> 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 security clearance should be restored.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires possession of a security clearance. As part of an application for greater access authorization, the Individual completed a Questionnaire for National Security Positions (QNSP) form. During the subsequent investigation, the DOE Local Security Office’s (LSO) discovered that in 2018 the Individual unlawfully used prescription Adderall, a controlled substance, that was not prescribed to him while he possessed a security clearance. After concluding its investigation, the LSO, in a letter dated September 17, 2020 (“Notification Letter”), informed the Individual that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the

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<sup>1</sup> 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.

derogatory information implicated provisions of the Bond Amendment, 50 U.S.C. § 3343(b), and raised a security concern under Guideline H of the Adjudicative Guidelines.

The Individual exercised his 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 four witnesses and testified on his own behalf. The Individual submitted five exhibits, marked Exhibits A through E. The LSO submitted seven exhibits, marked Exhibits 1 through 7.<sup>2</sup>

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the LSO cited The Bond Amendment and Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines as the basis for suspending the Individual's security clearance. Ex. 1.

The relevant Bond Amendment section provides that “the head of 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). The Individual's unlawful use of Adderall, a controlled substance, that was not prescribed to him while he was in possession of a security clearance justifies the LSO's invocation of the Bond Amendment. Ex. 5 at 18. The LSO stipulated that the Individual's conduct did not satisfy the definition of “addict” under the Bond Amendment. Tr. at 5.

Guideline H provides that “the illegal use of controlled substances, to include the misuse of prescription [drugs] . . . [,] 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 “any substance misuse[.]” “[i]llegal possession of a controlled substance[.]” or [a]ny illegal drug use while granted access to classified information or holding a sensitive position[.]” *Id.* at ¶ 25(a), (c), (f). The information referenced in the preceding paragraph also justifies the LSO's invocation of Guideline H.

## **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

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<sup>2</sup> The LSO's exhibits were combined and submitted in a single, 384-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 exhibit and 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.

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 Individual admitted in his written response to the Notification Letter that, after he submitted a QNSP dated August 2018, he illegally used prescription Adderall tablets approximately two months later in October 2018. Ex. 2 at 7. He stated that his conduct was an isolated incident and that he later self-reported it because he wanted to be completely honest and give a complete, transparent view of his past. *Id.* at 8.

The record includes the Individual’s 2019 QNSP which contains his disclosure.<sup>3</sup> Ex. 6 at 71. Therein, the Individual reported that he “took small doses” of Adderall “2-3 times” between August 2018 and December 2018.<sup>4</sup> *Id.* He later explained to an investigator that he purchased a total of four tablets. Ex. 7 at 162. As to why he purchased the Adderall after submitting the 2018 QNSP, the Individual explained that it was a lapse in judgment due to being under immense stress while in graduate school, and he did not consider his current employer to be in his future and thus failed to consider the consequences of his conduct. Ex. 5 at 19.

At the hearing, the Individual’s former work colleague, a current work colleague, and the Individual’s current manager testified on the Individual’s behalf. All three witnesses testified that the Individual is reliable. Tr. at 35, 45, 63. The current work colleague also testified that she and the Individual were in the same graduate program together under the same graduate advisor at the time the Individual used the Adderall. *Id.* at 42. She described the academic environment as one with “high expectations,” “fairly limited feedback,” and “high pressure.” *Id.* at 43, 46. She recalled that, at the time, she and the Individual discussed the “stress,” “isolation,” and “difficulty” of the program. *Id.* at 43. She also contrasted their graduate program experience with their current work

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<sup>3</sup> The Individual explained that he submitted the 2018 QNSP for an L clearance, and then he subsequently submitted the 2019 QNSP for a Q clearance after being hired full-time at his current employer. Tr. at 94.

<sup>4</sup> In his response to the Notification Letter, the Individual stated that he only ingested one tablet and disposed of the remaining tablets in December 2018. Ex. 2 at 7. However, he clarified in his testimony that he, in fact, consumed approximately two or three tablets. *See infra.*

environment, which she described as a “very supportive team environment.” *Id.* at 46. The current work colleague also testified that she had observed the Individual self-report an email-related security violation. *Id.* at 52.

The Individual’s sister testified that the Individual took his graduate studies very seriously. *Id.* at 17. She testified that he is responsible, detail-oriented, trustworthy, and loyal. *Id.* at 18. She too described a separate, relatively recent event where the Individual self-reported a security incident at his employer. *Id.* at 19. Turning to the Individual’s Adderall use, she testified that she only learned about his conduct in relation to the administrative review proceedings. *Id.* at 21. The Individual told her that he tried the Adderall because he was struggling with his graduate course work and wanted to increase his productivity. *Id.*

Lastly, the Individual testified about the circumstances surrounding his use of Adderall. In the Summer of 2018, during his graduate school program, the Individual obtained an internship with his current employer. *Id.* at 66. After the internship ended, the Individual returned to his graduate program. *Id.* It was upon his return that he subsequently procured the four Adderall tablets. *Id.* at 67. The Individual testified that he consumed two or three tablets over the course of a semester from August to December 2018, and he disposed of the remainder. *Id.* at 66-67, 90-91. The Individual testified that he had since finished his graduate program, left the city and university within which the program was located, and that the only person from that time period with whom he associates is the current colleague who testified on his behalf. *Id.* at 68. The Individual adopted her description of his current work environment. *Id.* at 91-92. He also testified that he now has supportive family and friends that he can turn to if he should come under immense stress in the future. *Id.* at 84-85.

As for whether he possessed a security clearance at the time he used Adderall, the Individual testified that he was granted a clearance in October 2018, but he was unaware at the time because he did not obtain his new badge that indicated his cleared status until March 2019. *Id.* at 67. He explained that he only recently became aware of or recalled that he was granted a clearance in October 2018 because he reviewed work emails in preparation for the administrative hearing. *Id.* at 76, 88. He also testified that, even if he had been aware of his cleared status in October 2018, he did not think about the responsibility of being a clearance holder until he picked up his new badge in March 2019. *Id.* at 87. Notwithstanding testifying to the above, the Individual admitted that he used Adderall while in possession of a security clearance. *Id.* at 76.

The Individual confirmed that he self-reported his Adderall use in the 2019 QNSP. *Id.* at 86, 94. He also explained that at the time he submitted his first QNSP, he did not expect that he would accept a long-term position at his current employer because he thought he would enter the private sector. *Id.* at 96. However, after obtaining his current position, he submitted the second QNSP, which he stated was his first opportunity to disclose his Adderall use. *Id.* at 79-80. The Individual testified that the administrative review process made him realize “the seriousness and responsibility that is required of any security clearance holder.” *Id.* at 95.

The Individual testified that he is not a current user of controlled substances and that he has been abstaining from drug usage since December 2018. *Id.* at 72. As evidence of the same, the Individual submitted into the record a June 2021 Hair 5 Drug Panel Test Result that reports his sample was

negative for the presence of all tested substances. Ex. B. The Individual testified that he underwent a hair sample drug screen because he believed that it would cover a significantly longer time period than a urine test. *Id.* at 92. The record also includes a signed statement from the Individual in which he stated his intent to abstain from all drug involvement and substance misuse and acknowledged that future involvement or misuse is grounds for the revocation of his national security eligibility. Ex. C.

## **V. ANALYSIS**

### **A. Bond Amendment**

Based on the LSO stipulation stated above, I need only determine whether the Bond Amendment prohibits the Individual from being eligible for a security clearance because he is an “unlawful user of a controlled substance.” An “unlawful user of a controlled substance” is defined as follows:

[A]ny person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or who is a current user of the controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate the individual is actively engaged in such conduct.

*In the Matter of: Personnel Security Hearing*, OHA Case No. PSH-21-0031 (2021) at 7-8 (applying DOE’s new standard outlined in Memorandum from David Turk, Deputy Secretary of Energy, to Kathleen Hogan, Acting Under Secretary for Science and Energy, *et al.*, “Revision of DOE Policy Regarding Application of the Bond Amendment” (April 23, 2021)).

I find that the Individual does not meet the above definition of an unlawful user. There is no dispute that he previously used a controlled substance, Adderall, without a prescription in the final two months of 2018. However, there is no evidence that he is a current user of Adderall or that he lost self-control when he did use Adderall. To the contrary, the record indicates that his use of Adderall was over two years ago, limited to two or three instances, and only for a specific purpose: namely, to increase his performance in the final months of his graduate program. The record also establishes that he decided to dispose of the remaining Adderall instead of engaging in further consumption. The Individual’s circumstances are quite distinct from that of a person who has lost self-control or is a current user of Adderall. Thus, I conclude that the Bond Amendment is not a bar to the Individual holding a security clearance.

### **A. Guideline H Considerations**

An individual may mitigate security concerns under Guideline H under the following relevant conditions:

- (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[.]

Adjudicative Guidelines at ¶ 26.

I find that the security concerns related to the Individual's Adderall use are resolved under ¶ 26(a). First, as previously stated, the behavior occurred over two years ago, which is a significant period of time that represents a transition from graduate student to full-time employee. Furthermore, I find that the Individual's Adderall use was infrequent because he only consumed two to three tablets over a two-month period. Further still, I find that his Adderall use was under circumstances that are unlikely recur for the following reasons. First, the Individual is currently a full-time employee in a supportive environment that is very different than the stressful and unsupportive atmosphere of his graduate program. Second, the Individual credibly testified that he had been significantly impacted and learned his lesson regarding his unlawful Adderall use, and I am persuaded that he will not engage in the same behavior in the future if he should again contend with similarly challenging circumstances.

In reaching the above conclusion, I also considered the Individual's acknowledgement that, at the time he used Adderall, he did so while possessing a security clearance. However, the record also demonstrates, through the testimony of the Individual's sister and work colleague, that the Individual is careful to self-report and therefore take responsibility for his conduct. Furthermore, the Individual's own testimony demonstrated that he understands that he violated his responsibility as a cleared Individual, and the undisputed fact that he independently self-reported the behavior, coupled with the information discussed in the preceding paragraph and his overall candidness, establishes that he has accepted responsibility for his behavior. For all of the above reasons, I conclude that his past Adderall use does not cast doubt on his current reliability, trustworthiness, and good judgment.

I also find that the Individual has resolved the security concerns under ¶ 26 (b). The Individual clearly acknowledged his past substance misuse by disclosing his conduct in the 2019 QNSP and through his testimony. I find the Individual's subsequent actions and credible testimony that he will not use Adderall in the future persuasive evidence that he has overcome the problem. Finally, the Individual has established a pattern of abstinence from Adderall by demonstrating that (1) he has not used the substance for over two years, as supported by a laboratory drug test result; (2) he no longer associates with the same people, except his current work colleague, nor resides in the same environment as when he consumed the Adderall; and (3) he signed a written statement that he intends to abstain from all drug involvement and substance misuse and acknowledges that any future involvement or misuse is grounds for revocation of his national security eligibility.

Accordingly, I conclude that the Individual has resolved the Guideline H security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that implicated the Bond Amendment and raised a security concern under Guideline H 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 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 be restored.

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