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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: May 21, 2021) Case No.: PSH-21-0063
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Issued: September 29, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.

I. BACKGROUND

On January 7, 2020, the Individual informed a Local Security Office (LSO) that he was seeking outpatient treatment for misuse of prescription and over-the-counter medications. Ex. 7 at 1. On January 27, 2020, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 8 at 1. The Individual submitted his response to the LOI (the Response) on February 3, 2020, in which he reported that he had become addicted to an amphetamine medication that doctors had prescribed to him to treat Attention Deficit/Hyperactivity Disorder (ADHD), and Kratom, an over-the-counter herbal supplement with stimulant and opiate-like effects. Ex. 8 at 7-10. Because of the concerns raised by the Individual’s reports, the LSO requested that the Individual undergo a psychological evaluation by a DOE-contracted Psychologist (the Psychologist).

The Psychologist conducted a clinical interview (CI) of the Individual on March 13, 2020. Ex. 9 at 1.² During the CI, the Individual admitted that he had relapsed three days before. At the conclusion of the CI, the Psychologist referred the Individual to a laboratory for a urine drug test,

¹ Under the regulations, “Access authorization” means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

² In addition, the Psychologist reviewed the Individual’s personal security file and administered a standardized psychological assessment, the Minnesota Multiphasic Personality Inventory-2-Restructured Form, to the Individual. Ex. 9 at 1-2.

which confirmed that the Individual had recently used an amphetamine, and further indicated that the Individual's recent amphetamine use may have more extensive than he reported. Ex. 9 at 2, 5. On March 26, 2020, the Psychologist issued a report in which he found that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5) criteria for Stimulant Use Disorder, Moderate (SUD).³ Ex. 9 at 6. The Psychologist further found that the Individual had not been adequately rehabilitated or reformed from his SUD. Ex. 9 at 6. The Psychologist recommended that the Individual permanently abstain from stimulant use, continue receiving individual counseling twice a week, attend Narcotics Anonymous (NA) meetings twice a week, and obtain an NA sponsor. Ex. 9 at 6.

On November 4, 2020, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. See 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from five witnesses: The Individual, his spouse, two treating counselors, and the Psychologist. See Transcript of Hearing, Case No. PSH-21-0063 (hereinafter cited as "Tr."). The LSO submitted Eleven exhibits, marked as Exhibits 1 through 11 (hereinafter cited as "Ex."). The Individual submitted four exhibits, marked as Exhibits A through D.⁴

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance, citing Guideline H (Drug Involvement) of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

The LSO alleges that the Individual's admissions that he misused and became addicted to both a prescription amphetamine and Kratom, as well as the Psychologist's opinion that the Individual meets the DSM-5 criteria for SUD, raise security concerns under Guideline H. This information adequately justifies the LSO's invocation of Guideline H. Guideline H (Drug Involvement and Substance Misuse) provides that "the illegal use of controlled substances to include the misuse of prescription and non-prescription drug 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

³ The Psychologist further found that the Individual met the DSM-5 criteria for Social Anxiety Disorder (SAD). Ex. 9 at 6. The Psychologist further found that the Individual's SAD might increase his vulnerability to relapse but did not impair his judgment, reliability, stability, or trustworthiness. Tr. at 7. The Psychologist did not diagnose the Individual with ADHD.

⁴ The Individual's exhibits included: Ex. A, a set of laboratory reports indicating that 14 urine drug tests administered to the Individual from November 17, 2020, to May 28, 2021, were each negative; Ex. B, a formal recovery/abstinence agreement that the Individual entered into with his employer; Ex. C, Nurse's notes indicating that the Individual had received injections of a drug that would induce discomfort if he were to ingest any opiates; and Ex. D, attendance records from Program B.

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 conditions that could raise a disqualifying security concern under Guideline H include “any substance misuse” and “diagnosis by a duly qualified . . . Psychologist . . . of a substance abuse disorder.” Guideline H at § 25(a) and § 25(c).

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 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 entire process is a conscientious scrutiny of several variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 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. The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. THE HEARING

The Individual’s spouse testified that the Individual admitted abusing Kratom and amphetamines after she confronted him about changes in his behavior. Tr. at 12. She asked him to get help and he enrolled in a drug treatment program (Program A). Tr. at 13. However, she did not observe any changes in the Individual’s behavior after he enrolled in Program A. Tr. at 13. Instead, the Individual continued to abuse Kratom and Amphetamines, but was careful to limit his use to prevent detection by Program A’s drug testing program. Tr. at 13. After he left Program A, the Individual confided to her that he was continuing to abuse Kratom and amphetamines. Tr. at 14. At her request, the Individual stopped using Kratom and amphetamines and enrolled in a second drug treatment program (Program B) in the fall of 2020. Tr. at 14. After the Individual enrolled in Program B, he initially began exhibiting withdrawal symptoms. Tr. at 15. However, after the withdrawal symptoms subsided, the Individual began to act more “normally.” Tr. at 15. This improved behavior has continued to the present, and the Individual has not exhibited any further

signs of drug abuse. Tr. at 15. The Individual has been attending individual counseling sessions at Program B and they attend marital counseling together at Program B. Tr. at 15, 19. She testified that Program B has helped the Individual address trauma that was a root cause of his drug abuse. Tr. at 20-21. She monitors their finances for signs of further drug abuse. Tr. at 15-16. The Individual is also getting drug tested twice a month. Tr. at 17. The Individual gets an injection every month that will result in unpleasant side effects if he were to use Kratom or any similar drug. Tr. at 18. She is confident that the Individual will not abuse drugs again because the Individual and her have grown much closer, because the Individual has bonded with his new son, because the Individual is now happier, calmer, and more centered, and because the Individual now finds being sober is easier. Tr. at 18, 20-21. The Individual has been sober since late September or early October of 2020. Tr. at 20. She did not trust the Individual prior to his enrollment in Program B: she now trusts him. Tr. at 21.

Program B's clinical therapy director (the Director) testified at the Hearing. The Director testified that she began providing individual counseling to the Individual in September 2020. Tr. at 29. During this counseling, she treated the Individual for Posttraumatic Stress Disorder (PTSD) and a substance abuse disorder on a weekly basis.⁵ Tr. at 30. The Individual also attended group therapy sessions at Program B. Tr. at 31. The Individual was highly engaged in his therapy and his attendance was consistent. Tr. at 31. She administered an evidence-based treatment protocol to the Individual that was specifically formulated to address individuals with concurrent PTSD and substance abuse disorders. Tr. at 32. Objective measurement tools indicated that the Individual responded very well to this treatment protocol. Tr. at 33-34. The Individual reported that he had discontinued substance abuse, although he reported "a slip" during the first half of his treatment.⁶ Tr. at 35-36. In January 2021, the Individual transitioned to a new counselor (the Counselor) at Program B. Tr. at 40.

The Counselor provided the following testimony at the Hearing. The Counselor testified that she is a licensed clinical social worker, who is specifically trained in trauma treatment. Tr. at 48. She began providing individual counseling to the Individual in January 2021. Tr. at 50. Her work with the Individual initially specifically centered on treating his PTSD. Tr. at 50. He met with her on a weekly basis for 12 weeks of cognitive processing therapy (CPT) to address his PTSD. Tr. at 50. After the completion of the CPT, she began using dialectical behavioral therapy (DBT) for the Individual. Tr. at 52-53. The Counselor reported that the Individual was highly engaged in his treatment. Tr. at 51. As a result of his therapy, the Individual's symptoms significantly decreased. Tr. at 54. She did not provide any counseling to the Individual directly addressing his substance abuse disorders, however, by addressing the Individual's PTSD, the therapy was addressing the primary motivating factor for his substance abuse. Tr. at 56, 61. She felt that the Individual has been open and honest with her. Tr. at 57. The Individual is currently attending counseling sessions with her. Tr. at 57. The Individual also attended and completed an informational and educational class provided by Program B for people with PTSD. Tr. at 58-59. The Counselor testified that the Individual currently has a strong accountability and support system in place. Tr. at 60.

⁵ The Director diagnosed the Individual with PTSD, Opiate Use Disorder, Severe, and Stimulant Use Disorder, Severe. Tr. at 42.

⁶ The Individual testified that this "slip" did not involve amphetamines or Kratom, but rather an anti-depression medication, Wellbutrin, which he used at higher doses than prescribed. Tr. at 90.

The Individual testified that by the summer of 2019, he was spending \$200 a week on Kratom. Tr. at 72. Because of its cost, he tried to stop using Kratom. Tr. at 72. However, he began experiencing severe withdrawal symptoms. Tr. at 72. He also began arguing with his spouse, and having problems focusing, even on simple tasks. Tr. at 74. His spouse became concerned and brought his behavioral changes to his attention. Tr. at 74. In the fall of 2019, he admitted his substance abuse to his spouse. Tr. at 74-75. Shortly afterward, he began Program A, but did not experience any progress while attending that program, partially because he was able to adjust his drug abuse to avoid detection by Program A's drug testing protocol. Tr. at 75-76. He stopped attending Program A in November 2019. Tr. at 77. In August 2020, he entered Program B, and stopped using Kratom and amphetamines.⁷ Tr. at 81. During his initial assessment, Program B's staff diagnosed him with PTSD. Tr. at 85-86. He had been self-medicating his PTSD symptoms. Tr. at 86-87. He switched primary care doctors; his new doctor understands that he cannot be prescribed any stimulants. Tr. at 88. He has been prescribed a medication that will make him sick if he uses Kratom. Tr. at 88. His employer tests him for drug use twice a month. Tr. at 98. He plans to continue with Individual counseling. Tr. at 99. He is no longer experiencing withdrawal symptoms; his last craving occurred in April 2021. Tr. at 102, 113. He has entered into a sobriety agreement with his employer that requires that he be drug-tested twice a month. Tr. at 105. He sees a psychiatrist at Program B, every two months, who has prescribed an anti-depression medication, Wellbutrin, to him. Tr. at 106, 113. He confessed that he had abused Wellbutrin by using it at a higher dose than prescribed. Tr. at 90. His last use of amphetamines occurred on Labor Day of 2020. Tr. at 107. His last use of Kratom occurred in August 2020. Tr. at 112. The Individual admitted providing false information to the Psychologist during the CI. Tr. at 80.

The Psychologist testified at the Hearing after observing the Hearing testimony of each of the other witnesses. He opined that the Individual is "doing the right things." Tr. at 124. The Psychologist testified that Program B is a "solid program" and favorably noted that the Individual had received an evidence-based treatment specifically designed to address PTSD induced substance abuse. Tr. at 124-25. Most importantly, the Psychologist testified that he now believes that the Individual has demonstrated rehabilitation or reformation, and that his prognosis is now "good." Tr. at 127-128. The Psychologist testified that he was not concerned about the Individual's misuse of Wellbutrin. Tr. at 129.

V. ANALYSIS

In the present case, the Individual has been diagnosed with substance abuse disorders by both the Psychologist and the Individual's treating clinicians. However, as discussed above, the Individual has taken effective actions to address his substance abuse disorders, including intensive individual therapy to address the underlying motivation for his substance abuse, and has discontinued substance abuse since September 2020, approximately one year prior to the Hearing. After observing the testimony of the Individual, his spouse, and two of his treating counselors, the Psychologist opined that the Individual's prognosis is now "good" and that he is now rehabilitated or reformed.

The Adjudicative Guidelines set forth four conditions which may provide mitigation of security concerns arising under Guideline H. Guideline H at § 26. The Individual has shown that two of

⁷ The Individual also attended NA and SMART Recovery meetings from September 2020 to January 2021. Tr. at 82.

these conditions are sufficiently present in the instant case to mitigate the security concerns raised under Guideline H.

Section 26(b) provides that security concerns raised under Guideline H can be mitigated when “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 . . .” In the present case, the Individual has acknowledged his substance abuse and, as discussed at length above, taken several actions to address his abuse, including undergoing extensive individual counseling. As a result, he has been able to abstain from Kratom and amphetamine abuse for approximately one year. Accordingly, I find that the mitigating condition set forth at § 26(b) is present in the instant case.

Section 26(d) provides that security concerns raised under Guideline H can be mitigated by “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.” In the present case, the Individual has completed a treatment protocol specifically designed to address substance abuse issues arising from an individual’s PTSD, without a recurrence of abuse after completion of the protocol. As a result, a DOE contracted psychologist has found that the Individual has a favorable prognosis. Accordingly, I find that the mitigating condition set forth at § 26(b) is present in the instant case.

For the reasons set forth above, I conclude that the Individual has sufficiently mitigated the security concerns set forth in the Notification Letter with respect to Guideline H. I therefore find that the Individual has mitigated the LSO’s Guideline H security concerns.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline H. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline H. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should be restored. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals