

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: June 29, 2021)	Case No.: PSH-21-0079
)	
_____)	

Issued: October 22, 2021

Administrative Judge Decision

Phillip Harmonick, 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."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 access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. He had been previously granted a DOE security clearance which expired in 2014. Exhibit (Ex.) 6 at 46, Ex. 5 at 3. The Individual completed a Questionnaire for National Security Positions (QNSP) on November 26, 2019, in connection with again seeking access authorization. Ex. 6 at 51.² The Individual disclosed in the QNSP that he became dependent on Hydrocodone he was prescribed following a car accident and that he purchased and used Hydrocodone without a prescription until he sought treatment. *Id.* at 41–43.

An Office of Personnel Management (OPM) investigator interviewed the Individual on February 10, 2020, as part of OPM's background investigation of the Individual. Ex. 7 at 69. During the

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.

² The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibit. For example, the first page of Exhibit 2 is marked as page 14. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

interview, the Individual indicated that he was prescribed Hydrocodone for approximately one year following a car accident in 2009 and became dependent on the medication. *Id.* at 69–70. After the Individual’s doctor changed in 2010, and his new doctor refused to prescribe him Hydrocodone, the Individual purchased Hydrocodone from friends and coworkers. *Id.* at 70. The Individual indicated that he used Hydrocodone without a prescription on a daily basis from 2010 until he sought treatment in 2015. *Id.* OPM obtained medical records confirming that the Individual participated in a chemical dependency and recovery program in August 2015. *Id.* at 83.

On October 7, 2020, the Local Security Office (LSO) issued the Individual a letter of interrogatory (LOI). Ex. 5. In his response, the Individual admitted that he illegally purchased and used Hydrocodone while possessing a DOE security clearance, which expired in 2014, and did not disclose this behavior because of embarrassment and fear of termination. *Id.* at 3.

The LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines. Ex. 1.

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 seven exhibits (Ex. 1–7) and the Individual submitted one exhibit (Ex. A). The Individual testified on his own behalf, and offered the testimony of two character witnesses. Hearing Transcript (Tr.) at 3. DOE did not offer any witnesses.

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 access authorization. Ex. 1 at 1. “Conduct involving questionable judgment, lack of candor, dishonesty, 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 admission to having illegally purchased and used Hydrocodone without a prescription and failing to disclose this information. Ex. 1 at 1. The LSO’s allegations that the Individual deliberately concealed unlawful behavior that he was required to disclose and engaged in personal conduct that creates a vulnerability to exploitation, manipulation, or duress, justify the LSO’s invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b), (e).

The LSO cited Guideline H (Drug Involvement and Substance Misuse) as the second basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 1. “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 Individual's admission to illegally purchasing and using Hydrocodone while in possession of a DOE security clearance. Ex. 1 at 1. The LSO's allegations that the Individual engaged in substance misuse, illegally purchased a controlled substance, and engaged in illegal drug use while granted a security clearance justify the LSO's invocation of Guideline H. ¶ 25(a), (c), (f).

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 Dep't 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. HEARING TESTIMONY

A manager in the Individual's supervisory chain testified that he had worked with the Individual for over twenty-five years in various capacities and that the Individual had worked under his supervision with the DOE contractor for approximately two years. Tr. at 10–11. The manager testified that he had never observed the Individual behaving in a way that might suggest he was under the influence of drugs. *Id.* at 15. The manager testified that he was "blind" to the Individual's drug misuse when it occurred, and that the Individual performed at a high level at work during the time when he was misusing prescription medication. *Id.* at 16–17.

The manager testified that the Individual told him that he had been addicted to prescription medication and that he had illegally purchased opioids when his doctor refused to prescribe them to him. *Id.* at 13. The manager indicated that the Individual had also disclosed that he participated in a thirty-day outpatient treatment program for addiction. *Id.* at 15. The manager indicated that the Individual had told him that he intended to abstain from drug use in the future. *Id.* at 16.

The Individual's supervisor testified that he had been the Individual's first-line supervisor for two years and previously worked with the Individual for several years beginning in 2007. *Id.* at 22. The Individual's supervisor said that the Individual had told him that he had disclosed an addiction to prescription medication on his QNSP. *Id.* at 24. The Individual's supervisor denied that he had ever suspected the Individual of being under the influence of drugs at work or suffering from the effects of drug use. *Id.* at 24–25.

The Individual testified that he was prescribed Hydrocodone for an extended period of time after being injured in a significant car accident until he was assigned to a new doctor who refused to prescribe him Hydrocodone. *Id.* at 31–33. The Individual testified that he became addicted to the Hydrocodone and that, although he attempted to stop using the medication himself, he always resumed using it within three days of attempting to stop due to restlessness and inability to sleep without the medication. *Id.* at 35, 42–43. The Individual learned that some of his coworkers had access to Hydrocodone and purchased it from them at a DOE site. *Id.* at 37–38. The Individual also obtained Hydrocodone from his brother who purchased it from a third party. *Id.* at 38. The Individual said that he “talked [himself] into” believing that it was acceptable to illegally buy medication at work because he had “legally” obtained prescription medication for so long and did not think that what he was doing was “that bad at that time” *Id.* at 40.

The Individual testified that he went to his doctor to seek help after he “had enough” of failing to quit the medication on his own. *Id.* at 41. The Individual's doctor referred him to a specialist who prescribed him medication to help him wean himself off of the Hydrocodone and recommended a thirty-day outpatient treatment program. *Id.* at 41–44. The Individual indicated that he completed the outpatient treatment program and had not used any prescription pain medication since completing the program. *Id.* at 44. The Individual testified to remembering how lucky he felt that he had not experienced as severe of consequences from his addiction as other program attendees. *Id.* at 44–45. The Individual testified that if he was injured in the future and needed pain management that he would ask for professional guidance from his doctor. *Id.* at 46–47. The Individual denied that he was susceptible to opioid addiction presently, but that anyone could become addicted if they used opioids for an extended period of time. *Id.* at 47. The Individual indicated that he would not seek to use or obtain illicit substances again in the future. *Id.* at 50–51.

V. FINDINGS OF FACT

The Individual was involved in a significant car accident in 2009 after another motorist fell asleep at the wheel and struck his vehicle while he was driving on a freeway. Ex. A (reflecting media coverage describing the Individual's condition as “a miracle” considering the severity of the accident). The Individual was prescribed Hydrocodone for pain related to his injuries for approximately one year. Ex. 7 at 69–70. In 2010, the Individual was assigned to a new doctor who refused to prescribe him Hydrocodone. *Id.* at 70. The Individual subsequently obtained Hydrocodone from his brother and coworkers at a DOE site. *Id.*; Tr. at 37–38.

The Individual used Hydrocodone daily from 2010 to 2015 without a prescription. Ex. 7 at 70. The Individual attempted to discontinue using Hydrocodone on numerous occasions during this period but always resumed using Hydrocodone after he found the withdrawal symptoms unbearable. Tr.

at 35, 42–43. The Individual held a DOE security clearance until 2014 but failed to disclose his prescription drug misuse because of embarrassment and fear of termination. Ex. 5 at 3.

The Individual sought assistance from his doctor in overcoming his addiction and participated in a thirty-day outpatient treatment program in August 2015. Ex. 7 at 83; Tr. at 41–44. The Individual denies having used any illegal drugs or prescription pain killers in the six years since he completed the treatment program. Tr. at 45–46. The Individual intends to abstain from prescription drug misuse in the future and has communicated with his manager regarding his prior prescription drug misuse and future intentions to avoid prescription drug misuse. *Id.* at 13–16, 50–51. The Individual disclosed his prior prescription drug misuse on the QNSP, to the OPM investigator, and to the LSO before being confronted with the facts. Ex. 6 at 41–43; Ex. 7 at 69–70; Ex. 5.

VI. ANALYSIS

A. Guideline E

The LSO's allegations that the Individual illegally purchased and used Hydrocodone while possessing a DOE security clearance, and failed to disclose this information while the conduct was occurring, justify the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b), (e). The Individual did not dispute the LSO's allegations, but asserted that his conduct was attributable to his prior opioid addiction which he had resolved through treatment and that he was not at risk of engaging in similar conduct in the future. The Adjudicative Guidelines provide 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.

Adjudicative Guidelines at ¶ 17(a)–(g).

The Individual disclosed his Hydrocodone misuse and treatment on the 2019 QNSP and readily acknowledged his prescription drug misuse while holding a DOE security clearance, as well as his failure to disclose that conduct while it was occurring, at each step in the adjudication of his eligibility for a security clearance. The record reflects that the Individual was forthcoming and did not make any efforts to disguise his prior conduct. Moreover, the Individual established that he completed treatment for his prescription drug misuse and credibly testified that he had avoided any relapses since he completed treatment. There is no indication in the record that the Individual has misused prescription drugs since completing treatment in 2015.

In light of the Individual's candid acknowledgement of his past misconduct, treatment to resolve the opioid addiction that led to his derogatory conduct, and assurances that he will avoid prescription drug misuse in the future, I find that the fourth mitigating condition under Guideline E is applicable in this case. *Id.* at ¶ 17(d). As the Individual has addressed the opioid addiction that led him to hide his prescription drug misuse in the past, I find that the Individual's is unlikely to engage in similar deception in the future and that he has resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline H

The Individual's admission to illegally purchasing and using Hydrocodone while in possession of a DOE security clearance justifies the LSO's invocation of Guideline H. *Id.* at ¶ 25(a), (c), (f). The Individual asserted that his misuse of prescription drugs resulted from addiction that he developed to Hydrocodone prescribed to him by his doctor following a car accident and that he ceased misusing prescription drugs after receiving treatment in 2015. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline H if:

- (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.

Id. at ¶ 26(a)–(d).

The Individual demonstrated that he was prescribed Hydrocodone following a significant car accident. The Individual voluntarily sought assistance for his addiction and completed treatment for prescription drug abuse. The Individual represented that he has not used opioids, with or without a prescription, since completing treatment and there is no indication in the record that the Individual has misused prescription drugs since 2015. Moreover, the Individual indicated that he intends to avoid prescription drug misuse in the future and will exercise caution in any future situation that may require pain management. For these reasons, I find that the third mitigating condition under Guideline H is applicable in this case. *Id.* at ¶ 26(c). As the Individual has mitigated the security concerns related to his prescription drug misuse, and I am convinced that he is unlikely misuse prescription drugs in the future, I find that he has resolved the security concerns asserted by the LSO under Guideline H.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E and H of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all 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. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals