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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: September 30, 2021)	Case No.: PSH-21-0117
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_____)	

Issued: February 4, 2022

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Procedures for Determining Eligibility for Access to Classified Matter of 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 be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires her to hold access authorization. The Individual signed and submitted a Questionnaire for National Security Positions (QNSP) on July 24, 2020, in which she answered questions pertaining to her prior drug use. Ex. 6. She indicated that she had consumed an ex-partner’s Xanax once or twice in July 2017, that she had taken his Concerta in July 2016 to see if her inability to concentrate was “due to Attention [H]yperactivity [D]isorder symptoms[,]” (ADHD) and that she used cocaine on two occasions in 2017. Ex. 6 at 78-80. On August 12, 2020, the Individual underwent an Enhanced Subject Interview (ESI) with an Office of Personnel Management (OPM) investigator. Ex. 7. The Local Security Office (LSO), having unresolved questions, asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual completed and submitted on March 15, 2021. Ex. 5. After receiving the Individual’s responses to the LOI, the LSO suspended the Individual’s security

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

clearance and began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her 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), the Individual testified on her own behalf, presented the testimony of five other witnesses, and submitted three exhibits marked Exhibits A through C (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0117 (hereinafter cited as "Tr."). The DOE Counsel did not present the testimony of any witnesses and submitted seven exhibits, marked as Exhibits one through seven.

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 her eligibility for a security clearance. That information pertains to Guidelines E (Personal Conduct) and H (Drug Involvement and Substance Misuse).

Under Guideline E, "[c]onduct involving questionable judgement, 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." Adjudicative Guidelines at ¶ 15. With respect to Guideline E, the LSO alleged that while holding a security clearance, the Individual used an illicit drug and unprescribed substances in 2017 and 2016, specifically cocaine, Xanax, and Concerta. The Individual failed to report her use to the LSO as required. Ex. 1 at 1.

The LSO cited Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines as another basis for revoking the Individual's security clearance. Ex. 1. Not only do illegal substances cause mental or physical impairment, but they also raise "questions about a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines ¶ 24. Under Guideline H, the LSO alleged that: (1) the Individual used cocaine twice in 2017; (2) the Individual used Xanax, prescribed to her former spouse, once or twice in 2016; and (3) the Individual used Concerta, prescribed to her former spouse, once or twice in 2016. Ex. 1 at 1.

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 entire process is a conscientious scrutiny of a number of 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) (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 her 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.

IV. Findings of Fact

In her March 2021 LOI, the Individual confirmed that she has been in possession of a clearance since August 2015, and explained that in approximately July 2016, her former partner offered her a Xanax pill that had been prescribed to him, as the Individual had difficulty sleeping. Ex. 5 at 1. Around the same time, the Individual used her former partner's Concerta once or twice to be able to concentrate. Ex. 5 at 1. Later, in approximately February 2017, the Individual used cocaine, and stated that she failed to report the use of the aforementioned substances in a timely manner "due to ignorance." Ex. 5 at 1-3. The Individual acknowledged the fact that her drug use was inappropriate and stated that she would "accept full responsibility for any repercussions that may result[.]" Ex. 5 at 3.

During her OPM investigation, the Individual told the OPM investigator that her former partner gave her Xanax, as he believed her racing heartbeat that caused her inability to sleep was a symptom of anxiety. Ex. 7 at 98. The Individual further stated that although she was able to sleep after taking the Xanax, she slept for far too long, and accordingly, did not use Xanax again. Ex. 7 at 98. In a similar fashion, the Individual's former partner encouraged her to take Concerta, as he believed her inability to concentrate was caused by ADHD. Ex. 7 at 99. Although she was able to concentrate after taking the Concerta, she did not attribute her inability to concentrate to ADHD and discontinued any further use of the drug. Ex. 7 at 99. The Individual also explained that she used cocaine twice, and each time, her former partner obtained the drug. Ex. 7 at 99. Each time

she used cocaine, it was at her former partner's request, and although she did not want to use cocaine, she knowingly used the drug. Ex. 7 at 99. Although she considered it "a lame excuse," she felt pressured by her former partner to use cocaine. Ex. 7 at 99.

After requesting a hearing, the Individual elected to undergo a psychological evaluation by an expert of her own choosing (Individual's Expert) on December 28, 2021. Ex. C. It was revealed in the subsequent December 31, 2021, report produced by the Individual's Expert that she married her former partner in 2017 and stayed in that marital relationship for approximately four months, at which point, they ceased communicating in 2017. Ex. C at 2. The marriage was annulled in 2018. Ex. C at 2. The Individual reported that her former partner "drank a lot of alcohol regularly and used illicit drugs[,]'" which included cocaine. Ex. C at 3. During the course of their relationship, in addition to calling her names and making her "question[] her sanity and memory[,]'" the Individual's partner would deprive her of sleep. Ex. C at 3. She was also subjected to physical abuse by her former partner, which she believes resulted in chronic headaches and difficulty concentrating. Ex. C at 4, 6. Although her former partner knew the Individual could not use drugs while holding a clearance, he would press her on the matter until she relented; the report specifically noted his insistence when it came to cocaine. Ex. C at 4, 6. The Individual acknowledged that this behavior was out of character for her and evidenced a lapse in judgement. Ex. C at 6. She asserted that the last time she consumed a controlled substance was in February 2017. Ex. C at 6.²

The Individual's Expert opined that the Individual did not "possess the psychological characteristics of those who routinely engage in deceptive practices and/or rule-violating behaviors." Ex. C at 9. He also did not find any evidence that the Individual suffered from a substance use disorder and confirmed that the Individual was in an abusive relationship at the time she used controlled substances, resulting in uncharacteristic behavior and poor decision making. Ex. C at 9-10. However, "[h]er judgement now seems to be intact and sound." Ex. C at 10. Finally, the Individual's Expert opined that the Individual "does not have any condition that could negatively affect her judgment, reliability, or trustworthiness." Ex. C at 11.

Hearing Testimony

The Individual's Expert testified that he conducted several psychological assessments and screened the Individual for drug abuse and alcohol use disorder. Tr. at 38-39.³ As a result, it was determined that the Individual was "free of any particular mental health condition or substance use condition." Tr. at 41. Further, the Individual's Expert found the Individual's judgement was intact, that she had good insight, and that she did not "have any condition that [could] negatively affect her judgment, reliability and trustworthiness. Tr. at 41-42, 52.

² The Individual voluntarily submitted to a seven-panel hair sample drug test on December 3, 2021. Ex. A. The Individual was negative for all listed substances, including cocaine. Ex. A.

³ The Administrative Judge qualified the Individual's Expert as an expert in the field of psychology, and although he was not qualified as an expert in national security, his background in national security was noted. Tr. at 24-38.

Importantly, the Individual's Expert asserted that the abuse the Individual suffered at the hands of her former partner in 2016 and 2017 caused her to behave in an uncharacteristic manner and stated that the abuse consisted of "advanced torture techniques." Tr. at 42-43, 69.⁴ The Individual's Expert stated that, as a result, it is possible that the Individual's recall regarding this relationship would be imperfect. Tr. at 44. Based on the statements the Individual made, the Individual's Expert believed that the Individual's former partner, having deprived the Individual of sleep, made the Individual believe she had a psychiatric disorder. Tr. at 45-46. It was under these circumstances that the Individual elected to use medication that was not prescribed to her. Tr. at 71-72. Her former partner's coercive tactics resulted in the Individual's cocaine use, which the Individual's Expert believed the Individual was not otherwise inclined to do. Tr. at 46. Although she did not leave the abusive relationship unscathed, the Individual's Expert believes the Individual has "returned to a level of functioning similar to...what her baseline was before the [abusive] relationship[.]" Tr. at 47. Further, the Individual's Expert opined that the Individual has learned from the experience, and can, accordingly, guard against a similar experience in the future. Tr. at 47-48. The Individual's Expert strongly felt that shame and fear prevented the Individual from reporting the drug use, but since the Individual has disclosed these events to enough people, she is no longer susceptible to blackmail or undue influence. Tr. at 56-57. He also did not find any indicators of past substance abuse or potential future substance abuse. Tr. at 62.

The Individual's colleague, supervisor, longtime friend, and cousin all testified to the Individual's reputation as an honest, trustworthy, and reliable person who possesses good judgement and integrity. Tr. at 78-80, 88-89, 101, 110-11. Although the Individual's supervisor denied having ever seen the Individual consume alcohol, her coworker had seen the Individual consume alcoholic beverages on social occasions, but she did not see the Individual drink "very much[.]" Tr. at 80, 89. Her longtime friend and cousin confirmed that the Individual does not frequently consume alcoholic beverages. Tr. at 101, 111. The Individual's colleague and supervisor denied having any knowledge pertaining to whether the Individual engaged in recreational drug use or the misuse of prescription medication, and her longtime friend and cousin confirmed that he did not "know her to be someone who uses drugs habitually or recreationally." Tr. 80, 89-90, 102, 111. The Individual's colleague and supervisor confirmed that annual training is required for individuals who hold a security clearance, and that the training covers self-reporting requirements as well. Tr. at 82-83, 92-93.

The Individual testified that her former partner informed her that he suffered from a number of mental illnesses, and she knew of at least one confirmed diagnosis. Tr. at 121. As a result, he had a number of prescriptions he would take regularly. Tr. at 122. Although her former partner was initially doting and caring, he began "punishing" her to teach her lessons. Tr. at 123-24. His methods of punishment included physical assault. Tr. at 130; Ex. C at 4. He was also verbally abusive and would intentionally humiliate her in front of others, and his behavior was such that the Individual would question her own memory. Tr. at 124-26. The Individual confirmed that her former partner would intentionally deprive her of sleep, and was physically abusive toward her,

⁴ Although the Individual's Expert acknowledged that the Individual was aware that she was precluded from using illicit substances or taking medication that was not prescribed to her while holding a security clearance, he stated that the abuse she suffered clouded her judgement at that time. Tr. at 52-55.

having kicked the back of her head on one particularly egregious occasion. Tr. at 126-28. She testified that her former partner would pressure her and coerce her into doing things, like using cocaine, for the purpose of placing her in compromising positions. Tr. at 132-34. However, she denied being susceptible to any blackmail, as she has disclosed all pertinent facts to investigators. Tr. at 135-37. Further, if future attempts at blackmail are made, the Individual stated that she will report such attempts to her local security office. Tr. at 138.

The Individual disclosed drug use in the QNSP during her reinvestigation, however, she stated that she was unaware of the fact that she had to self-report within five days. Tr. at 143. She was made aware of the self-reporting requirement during her interview with the OPM investigator. Tr. 156. The Individual also testified that she intends to refrain from any future drug use. Tr. at 140-41. In addition to cutting off all contact with her former partner, the Individual has “rebuilt” her life and has also discontinued relationships with other individuals who have used illicit substances in her presence. Tr. at 143-145.

V. Analysis

Guideline E

In relevant part, the Adjudicative Guidelines provide that an Individual may mitigate Guideline E concerns if:

- a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts
- 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 taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress
- 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).⁵

The Individual’s counsel argued that the Individual made prompt, good faith efforts to disclose her drug use, stating that the Individual disclosed information at the earliest possible moment that “she understood she was required to” make such disclosures. Tr. at 161. Based on the evidence before me, I cannot agree. As a clearance holder, the Individual was subject to annual training pertaining

⁵ I need not address the other Guideline E mitigating factors as they are not applicable in the present case.

to her clearance, which covered the self-reporting requirement. Accordingly, she was bound by those reporting requirements despite her claim that she was unaware of them. Reporting her drug use at the time she completed her QNSP was, therefore, untimely. Further, the Individual's counsel argued that the behavior was infrequent and occurred under unique circumstances. The failure to report did not take place under unusual or unique circumstances, as clearance holders are under a continuing obligation to report all derogatory information. Because the Individual was under a continuing obligation to report her use of controlled substances and did not do so until she completed her QNSP, her concealment of past drug use lasted approximately four years, continuing into the recent past. Therefore, I cannot find that the Individual mitigated Guideline E concerns pursuant to ¶ 17 (a) and (c).

However, there is credible evidence in the record indicating that the Individual was the victim of domestic violence. As the December 31 report and the testimony presented by the Individual's Expert indicate, the Individual engaged in uncharacteristic behavior as a result of the physical and mental abuse she endured. During that time, she was subject to such circumstances as sleep deprivation, physical violence, and duress at the hands of her former partner, altering her judgment. In separating from her former partner and discontinuing all contact with him in 2017, the Individual has sought to rebuild her life. As indicated in the December 31 report, the Individual's "judgement now seems to be intact and sound." Ex. C at 10. Further, as the Individual's Expert testified, the Individual learned from the experience and can guard against enduring similar experiences in the future. In separating from her former partner, she removed herself from the circumstances that negatively affected her judgement, and thus, eliminated her vulnerability to exploitation, duress, or manipulation. Further, her association with her former partner, a person who routinely used controlled substances, has ceased. Accordingly, I find that the Individual has mitigated the Guideline E concerns pursuant to mitigating factors 17(e) and (g).

Guideline H

The Adjudicative Guidelines provide, in pertinent part, that an Individual may mitigate Guideline H concerns if "[t]he 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." Adjudicative Guidelines at ¶ 26(a).⁶ I find that this mitigating factor is present in the instant case. As the record indicates, the Individual consistently and credibly stated that she last ingested any controlled substances in 2017. Her consistent assertion was supported by the negative hair follicle drug test that was conducted in December 2021. Further, her consumption of such substances occurred in the context of an abusive relationship that was extreme enough to alter the Individual's judgement, causing her to engage in behavior that the Individual's Expert deemed uncharacteristic of the Individual. That relationship was discontinued in 2017 and ultimately annulled in 2018. Accordingly, I find that the Individual's

⁶ The remainder of the mitigating factors under Guideline H are not applicable to this matter. *See* Guideline H at ¶ (b)-(d).

use of substances happened so long ago and under such circumstances that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgement.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and H of the Adjudicative Guidelines. After considering all the evidence, both 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, the Individual has demonstrated that restoring her 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. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals