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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: July 12, 2022 ) Case No.: PSH-22-0118  
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Issued: November 15, 2022

**Administrative Judge Decision**

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “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, entitled “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 access authorization should not be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In March 2022, her employer subjected her to a drug test, which indicated the presence of Hydrocodone and Hydromorphone in her urine. Exhibit (Ex.) 6.

Due to security concerns related to the Individual’s drug use, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In the Summary of Security Concerns, attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline H (drug involvement) and Guideline J (criminal conduct) of the Adjudicative Guidelines. Ex. 2. It also informed the Individual that she was subject to the Bond Amendment, which provides that a federal agency may not grant or renew a security clearance to a person who is an unlawful user of a controlled substance or an addict. *Id.*

<sup>1</sup> Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted seven numbered exhibits (Ex. 1-7) into the record. The Individual introduced eight lettered exhibits (Ex. A-H) into the record and presented the testimony of four witnesses, including the Individual herself. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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 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) (strong presumption against the issuance of a security clearance).

An 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). An 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.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included the Summary of Security Concerns, which set forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline H and Guideline J of the Adjudicative Guidelines as well as the Bond Amendment. Ex. 2. Guideline H relates to security risks arising from drug involvement and substance misuse. “The illegal use of controlled substances, to include the misuse of prescription and non-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. Guideline J relates to criminal conduct which creates doubts about a person’s judgment, reliability, and trustworthiness. *Id.* at ¶ 30. “[I]t calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* The Bond Amendment provides that “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).

In citing Guideline H, Guideline J, and the Bond Amendment, the LSO relied upon the Individual's March 2022 drug screening, in which she tested positive for Hydrocodone and Hydromorphone, which the LSO noted are both Schedule II controlled substances. Ex. 1.

#### **IV. Findings of Fact**

As stated above, the Individual tested positive for Hydrocodone and Hydromorphone during a March 2022 employer conducted drug screening. Ex. 6. It is undisputed that Hydrocodone and Hydromorphone are Schedule II controlled substances.

At the hearing, four witnesses testified on the Individual's behalf: her partner (Partner), the Individual herself, her daughter (Daughter), and her son-in-law (Son-In-Law). The Partner testified that he and the Individual have been together for 25 years, and although they are not legally married, he considers her to be his wife. Tr. at 22. Regarding the events preceding the positive drug test, the Partner explained that the Individual suffers from migraines, and on one occasion, "she was feeling really ill and asked me for...a pain pill, and...I mistakenly gave her one." *Id.* at 23. The Partner clarified that he gave her his prescription medication and stated that the Individual did not know what he was giving her. *Id.* at 23-24. The Partner stated that he understood that the Individual was subjected to a random drug screening the following morning, which produced a positive result. *See id.* The Partner testified that he has never known the Individual to take a prescription medication that was not prescribed to her, and he described her as always being "drug free." *Id.* at 24.

The Partner stated that he now keeps his medications hidden, and the Individual does not know where they are located. *Id.* at 26. The Partner testified that he keeps his medications "locked up," but he later clarified that he does not keep them "under lock and key." *Id.*

The Individual testified on her own behalf and did not dispute that she took the prescription medication that appeared on her positive drug test. *See id.* at 32. The Individual testified that, since 2019, she had undergone random drug screenings from her employer on at least a monthly basis, and she had never received a positive result. *Id.* at 29. She submitted seven random drug test results spanning from April 2022 to August 2022, all of which were negative. Ex. E-F. <sup>2</sup> She explained that she has a history of migraines, and on the day she took the prescription medication, she was suffering from a migraine. Tr. at 29. The Individual stated that she asked the Partner to give her "migraine medication."<sup>3</sup> *Id.* at 32. She noted that both she and the Partner kept their medications in the "same location" in the kitchen, where the Partner keeps them "locked up." *Id.* at 35. The Partner gave her a pill, and she fell asleep. *Id.* The following morning, her employer informed her that she

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<sup>2</sup> It should be noted that the Individual's Exhibits E and F contain identical copies of the testing results. *Id.* The Individual's exhibits also show a random test that was conducted in September 2022; however, the results of the test are absent. *Id.* The Individual testified that she did not know why the results of that test were missing. Tr. at 40. At the hearing, DOE Counsel suggested that the Individual submit additional drug screening results following the hearing, but the Individual did not submit any additional testing into the record. *Id.*

<sup>3</sup> The Individual testified that she has a valid prescription for a migraine medication. Tr. at 34.

would be subject to a drug screening, which was positive for Hydrocodone and Hydromorphone. *Id.*

The Individual explained that although her migraine medication pills were medium-sized, white, oval shaped pills, and the Partner gave her a “big...almost like horse pill,” she did not question the Partner because she “was just in a lot of pain.” *Id.* at 41-42. She also stated that on the morning after she had taken the Partner’s medication, she told him “I don’t think that was my medication” because she “felt a little weird, like...if it was...stronger than my migraine medication.” *Id.* at 42. The Individual indicated that the Partner then told her, “I couldn’t find your medication.”<sup>4</sup> *Id.* at 43. Although she realized that she took “something other than [her] migraine medication,” she did not “think to tell anyone that [she] had taken a medication” that was not prescribed to her when she was ordered to report for her drug screening. *Id.* at 43-44. When she learned she had tested positive, the Individual testified that she was “shocked” as she did not “take drugs.” *Id.* at 31. She stated that she immediately called the Partner and “found out that he had given [her] one of his prescription medication[s].” *Id.*

The Individual testified that, since testing positive on her drug screening, she has now changed how her medications are stored in order to prevent future mistakes. *Id.* at 37-38. She stated that she now keeps her medications in her purse, and she is the only person who retrieves them. *Id.* at 38. When asked why the Partner testified that he hides his medications from her, the Individual stated that she did not know, but he has “always been that way.”<sup>5</sup> *Id.* at 45. She further testified that, since her positive drug test, the Partner has removed his medications from the kitchen and now stores them in a safe. *Id.* at 45.

The Daughter testified that, on the day the Individual tested positive for “pain medicine,” the Individual was “very disappointed in herself.” *Id.* at 14. The Daughter stated that she has never known the Individual to have “a problem with taking pain medication [or] ... taking medication that was not prescribed to her.” *Id.* She testified that the Individual is trustworthy and does not “do anything illegal to jeopardize her job in any way.” *Id.* at 15. The Daughter also testified that the Partner keeps his medications “locked up.” *Id.* at 16.

The Son-in-Law testified that he has known the Individual for over 20 years, and he has never known the Individual to use medication that was not prescribed to her or in a manner that was outside its intended purpose. *Id.* at 18, 20-21. He also felt that the Individual was honest and had never questioned her ability to follow rules. *Id.* at 21.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of

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<sup>4</sup> It is not clear from the Individual’s testimony whether she learned that the Partner had given her his prescribed medication at the time of this conversation. Additionally, it is unclear as to whether the Individual learned that she was given something other than her prescribed migraine medication prior to receiving her positive drug screening results as she provided two differing accounts regarding the timing of her realization. *See* Tr. at 36, 43.

<sup>5</sup> I note that this testimony appears to be contrary to the Individual’s testimony that her migraine medication and the Partner’s medications were stored in the same location in the kitchen. Tr. at 35.

the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns noted by the LSO regarding Guideline H, Guideline J, and the Bond Amendment. I cannot find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be restored. The specific findings that I make in support of this Decision are discussed below. Due to the interconnected nature of the Guideline H and Guideline J security concerns, I will analyze them together.

Misuse of a prescription medication can raise a security concern under Guideline H and disqualify an individual from holding a security clearance. Adjudicative Guidelines at ¶ 24-25. Conditions that could mitigate a security concern under Guideline H include: (a) the behavior was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on an individual's current reliability, trustworthiness, or judgment; or (b) an individual acknowledges his or her drug involvement, provides evidence of actions taken to overcome this problem, and has established pattern of abstinence, including dissociating from drug-using associations, avoiding the environment where he or she used drugs, and providing a signed statement of intent to abstain from all drug-involvement.<sup>6</sup> *Id.* at ¶ 26(a), (b).

Turning to Guideline J, evidence of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted, could raise a security concern that may disqualify a person from holding a security clearance. *Id.* at ¶ 31(b). A condition that could mitigate a security concern under Guideline J is that so much time has elapsed since the criminal behavior occurred, or it occurred under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or good judgment.<sup>7</sup> *Id.* at ¶ 32(a).

In this case, it is undisputed that the Individual took a Schedule II controlled substance that was not prescribed to her. *Id.* at ¶¶ 25(a), 32(a). It appears that the Individual used the Partner's medication in an unusual circumstance, as she was suffering a migraine and the Partner was unable to locate her prescribed medication. *See id.* at ¶ 26(a). However, based on my analysis below, there is insufficient evidence in the record for me to find that this situation is unlikely to recur and that it does not cast doubt on the Individual's current reliability, trustworthiness, or judgment. *See id.* at ¶¶ 26(a), 32(a).

First, I found the Individual's testimony to be, at times, confusing, contradictory, and concerning. I, therefore, question the credibility of her testimony. The Individual testified that she knew the Partner did not give her own migraine medication, as the pill he provided her was a different size than hers; however, despite this awareness, she took the medication. Additionally, although the Individual provided two differing accounts in her testimony of when she realized she took a medication other than her own, it appears that, prior to going to work on the day of the drug screening, she knew she took a medication other than her migraine prescription based upon the way

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<sup>6</sup> Although Guideline H lists two other mitigating conditions as well, *see* Adjudicative Guidelines at ¶ 26(c), (d), these are not relevant to the Individual's case and therefore I do not consider them.

<sup>7</sup> Although Guideline J lists three other mitigating conditions as well, *see* Adjudicative Guidelines at ¶ 32(b), (c), (d), those are not relevant to the Individual's case and therefore I do not consider them.

she was feeling and her conversation with the Partner. Nonetheless, she did not attempt to find out from the Partner what medication he gave her. Furthermore, when the Individual was notified that she would be subject to a drug screening, she did not disclose that she took a medication that had not been prescribed for her migraines.

Turning to whether this situation is unlikely to recur, insofar as the Individual testified that she now keeps her migraine medication in her purse and is the only one to retrieve it, I cannot find that this will ensure that she does not take medications that are not prescribed to her. The problematic conduct in this situation occurred, not because her medication was stored improperly and not because someone else went to retrieve it, but because she took a medication for her migraine, knowing it was not her migraine pill. Furthermore, I find it concerning that the Partner feels the need to hide his medication from the Individual. The Partner did not explain why he does so. Although the explanation could be as practical as ensuring that his medication is not mistaken for something else, his lack of explanation leaves open the question of whether he hides the medication from the Individual out of a concern that she may inappropriately access it. The Individual testified, without any adequate explanation, that the Partner has always hidden his medication from her; however, according to the Individual, on the day of her migraine, all of their medication was kept together in the kitchen. Ultimately, I found the Individual's testimony and her Partner's testimony insufficient to persuade me that it is unlikely the Individual will take medication that is not prescribed to her in the future.

Finally, although the Individual provided evidence of seven negative drug tests, I note that these tests were taken over a four-month period and merely provide a brief insight into the Individual's history of drug testing and potential drug misuse. As such, I cannot find that the Individual has established a pattern that she has not used a medication other than that which is prescribed for her migraines. *See id.* at ¶ 26(b). As stated above, I must resolve any doubts in favor of national security, denying a security clearance when there is any uncertainty about an individual's eligibility. *See* 10 C.F.R. § 710.7(a); *see also Egan*, 484 U.S. 518, 531 (1988). In this situation, although it is quite possible that the Individual's use of the Partner's medication was a one-time mistake, given the Individual's contradictory and confusing testimony and the limited drug testing results that were entered into the record, I cannot find that the Individual has provided sufficient evidence to show that she has mitigated the security concerns. As such, for the foregoing reasons, I conclude that the Individual has not sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline H and Guideline J.

Regarding the Bond Amendment, the DOE defines an "unlawful user of a controlled substance" 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 policy 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 cannot find that there is sufficient evidence in the record to determine that the Individual is not an unlawful user of a controlled substance pursuant to this definition. First, as noted above, the Individual knowingly took a prescription medication for her migraine that was not prescribed to her and failed to report it prior to undergoing a random drug screening as recently as approximately seven months prior to the hearing. In light of the contradictory testimony regarding the circumstances of this event and the limited number of drug test results submitted into evidence, I cannot find that this was a one-time occurrence and that the Individual does not or has not used the Partner’s medication on other occasions. Additionally, the Partner’s testimony that he hides his medication from the Individual raises a concern as to why he feels he must keep his medication from the Individual and whether he has some apprehension regarding her usage of the medication. As such, I cannot find that the Bond Amendment is inapplicable in this situation.

## **VI. Conclusion**

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline H, Guideline J, and the Bond Amendment. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual’s access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals