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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 7, 2023 ) Case No.: PSH-23-0101  
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Issued: October 6, 2023

**Administrative Judge Decision**

Brenda B. Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 access authorization should not be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position which requires that he hold a security clearance. The Individual was selected for a random workplace drug test in May of 2023, the results of which were positive for oxycodone, a drug for which the Individual did not have a prescription. Exhibit (Ex.) 4 at 4. On receiving this information, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline H of the Adjudicative Guidelines. Ex. 4.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 6. 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. At the hearing, the Individual presented one witness, his Union President, and testified on his own behalf.

<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.

The LSO did not present any witnesses. Hearing Transcript in Case No. PSH-23-0101 (hereinafter cited as “Tr.”). The Individual submitted five exhibits (Ex. A–E). The LSO submitted thirteen exhibits (Ex. 1–13).

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

The LSO cited Guideline H (Drug Involvement and Substance Misuse) of the Adjudicative Guidelines as the basis for its concerns regarding the Individual’s eligibility for access authorization. Ex. 4 at 4. “The illegal use of controlled substances, to include the misuse of prescription . . . drugs . . . can raise questions about an individual’s reliability and trustworthiness, . . . 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 positive drug screen dated May 15, 2023. Ex. 4 at 4. The above allegation 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 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).

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.

## **IV. Findings of Fact**

On May 15, 2023, the Individual was randomly selected for a workplace drug test. Ex. 11 at 1. On May 18, 2023, DOE was notified that the Individual’s test was positive for oxycodone. *Id.* at 1–2. As a result of his positive test, the Individual’s contractor employer placed him on a paid leave of absence pending an investigation of his positive drug test. Ex. B. After the investigation confirmed that the Individual took oxycodone without a valid prescription, the Individual’s employer provided the Individual with an agreement which informed him of specific actions he would be required to do in order to be able to return to work. *Id.* The Individual signed this agreement with his employer on May 30, 2023, agreeing that he would: (1) complete a drug counseling program in accordance with the employer’s substance abuse program plan and policy, (2) provide a certificate of completion to his

employer's human resources department, (3) complete a second drug test after submitting certification of his completion of the drug counseling program, and (4) undergo random drug tests for a 12-month period upon his return to work, if the DOE authorizes the employer's request for the Individual's reinstatement.<sup>2</sup> *Id.* The agreement further stated that the Individual understood that he would be terminated if he received another positive drug test. *Id.*

The Individual accepted the terms of the agreement from his employer and signed the agreement. In accordance with the agreement, he completed a drug and alcohol class and subsequently took a drug test after completing his required course. Prior to the hearing, the Individual provided documentation, which included a copy of the signed agreement he made with this employer. Ex. B. He also provided a certificate of completion showing that, on June 8, 2023, he completed an approved four-hour drug and alcohol class as was required by agreement. Ex. A at 1, 3; Tr. at 54. He also submitted the results of a June 14, 2023, drug test showing that he tested negative for oxycodone.<sup>3</sup> Ex. C at 3.

The Individual also submitted a letter from his former supervisor. Ex. E. In the letter, the supervisor stated that he had worked with the Individual since 2009. *Id.* He additionally stated that the Individual has had no prior disciplinary action taken against him while working for the contractor. *Id.* The supervisor also shared his belief that the Individual's use of oxycodone was a mistake that the Individual learned from and will not repeat. *Id.*

Additionally, the Individual submitted a letter in which he described the circumstances of his positive drug test. Ex. D. He stated that on May 14, 2023, he was unloading bags of mulch while at the home of his mother, when she "noticed [him] grimacing from lower back pain . . . ." <sup>4</sup> *Id.* He stated that his mother offered him medication which he took. *Id.* He stated that he was then given a random drug screen on May 15, 2023, and he tested positive for the medication. *Id.* In his letter, he stated that he provided proof to his employer that the medication came from his mother. *Id.* He asserted that this was an isolated incident that will never happen again and stated that he has completed the requirements that his employer has asked of him in his signed agreement. *Id.* This includes his agreement to be subject to "on-demand drug testing" in addition to standard random testing from his employer. *Id.*

At the hearing, the Union President testified that he met the Individual shortly after the positive test occurred. Tr. at 14, 19. According to the Union President, since that time, he and the Individual have communicated on approximately a weekly basis in person and via phone. *Id.* at 15–16. He stated that the Individual was "upfront and honest" and immediately acknowledged his use of the drug when the Union President first spoke to him about the positive test result. *Id.* at 19–20. The Union President explained that, in his role with the union, he has dealt with employee misconduct issues in the past,

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<sup>2</sup> The signed agreement stated that if the Individual's second drug test was negative, "a request will be submitted to the Department of Energy (DOE) for reinstatement. Upon approval from DOE, you will be allowed to return to work. If not approved by DOE, your employment with [employer] will be terminated." Ex. B.

<sup>3</sup> The drug test also tested for additional substances, including marijuana, cocaine, Phencyclidine (PCP), heroin, and hydrocodone, and the Individual tested negative for all substances that were tested. Ex. C at 3.

<sup>4</sup> In the Individual's letter, he uses the words "family member;" however, the record reflects in his hearing testimony that the family member was the Individual's mother. Tr. At 48; Ex. D. For purposes of consistency in the decision, I will refer to the family member as his mother.

and unlike some others, the Individual “didn’t try to make excuses” and “was not in denial.” *Id.* at 20. The Union President testified that the Individual acknowledged that there was a problem and was committed to doing what he needed to do to get back to work. *Id.* He stated that he finds the Individual to be trustworthy and reliable because of his honesty and the fact that the Individual has never had any incidents in the past. *Id.* at 22–23, 35. He explained that, as Union President, he is notified whenever there are problems with employees, and he is notified by the contractor when an employee’s access authorization is suspended. *Id.* at 19–20, 24. He asserted that the Individual has not been involved with any disciplinary issues or policy violations, aside from the current incident. *Id.* at 24. The Union President further asserted that the Individual understands the seriousness of his behavior because he has complied with all of the requirements, including the second drug test, that the contractor provided for his return to work, without complaints or hesitation. *Id.* at 22, 24, 31–32, 35.

The Individual testified that he had worked for the contractor for 15 years, and he had not had any other security violations or incidents. *Id.* at 38–39. He asserted that this was the first time he had ever taken medication that had not been prescribed to him and asserted it was an isolated event. *Id.* at 50, 55. Additionally, the Individual testified that prior to his positive drug test result, he had been subject to “a couple” of random drug tests from his employer in approximately 2020 and 2021. *Id.* at 52–53. He indicated that he had never previously had “anything like . . . this situation [happen] in [his] life” including having a positive drug test. *Id.* at 39. He testified that the supervisor who wrote the letter of support has known him for approximately 14 years. *Id.* at 57; Ex. E. The Individual stated that the supervisor was his direct supervisor from approximately November 2016 to January 2018. Tr. at 56, 76. The Individual testified that he still works with the supervisor, although on a less frequent basis since the supervisor’s promotion. *Id.* at 57.

Regarding the incident, he testified that, on May 14, 2023, he was at his parents’ home for Mother’s Day, and he was working on his mother’s flower beds. *Id.* at 39, 48. He stated that he had been carrying about 30 to 40 bags of mulch and digging out a flower bed, which caused his back to hurt. *Id.* at 49. The Individual testified that his mother noticed that he was “holding [his] back and grimacing,” so she asked what was wrong. *Id.* at 48. The Individual explained that his back was bothering him, and his mother returned, offering him some pain medication. *Id.* He stated that he did not ask her what the medication was or ask to look at the bottle before he took it. *Id.* at 48–49. The Individual stated that, had he been at home when his back hurt, he would have taken over-the-counter medication, such as Advil or Aleve. *Id.* at 50. He explained he took the medication his mother offered without question because “[he] knew that his mother cared about [him,]” and he believed that his mother would not offer him medication “that would hurt [him].” *Id.* The Individual acknowledged that taking his mother’s prescription medication was a mistake and a lapse in judgment due to the pain he was experiencing. *Id.* at 50. He indicated that he regretted the decision, stating that he is “reminded every day . . . of the consequences of what [he] did.” *Id.* at 55. He stated that, in the future, if someone offers him medication that is not prescribed to him, he will decline it because it puts his job and his well-being at risk. *Id.* at 73.

The Individual testified that, the next day at work, on May 15, 2023, he was called in for a random drug test. *Id.* at 39, 48. When he was notified that he had failed the drug test due to the presence of oxycodone in his system, the laboratory representative asked him if he had a prescription for oxycodone or whether he had taken someone else’s medication. *Id.* at 51. The Individual stated that, when the laboratory representative asked him if he had a prescription, he then realized that taking one of his mother’s pills would be categorized as substance misuse. *Id.* at 50–51. He explained that, on

the date that he took his mother's medication, he knew it was a pain medication, but he did not know what specific drug it was. *Id.* at 49. The Individual stated that he immediately admitted to the laboratory representative that he had taken someone else's medication without a prescription. *Id.* He testified that his employer asked him to provide evidence to support his story as it wanted to verify that the Individual was not misrepresenting the source of the medication. *Tr.* at 53. The Individual testified that he told his mother that he had failed his drug test, and she told him that the pills she had were oxycodone pills. *Id.* at 60–61. He then asked her to obtain a copy of her prescription, which he provided to his employer the following day. *Id.* at 53; *Ex. D.*

The Individual stated that, subsequently, he had a one-hour assessment with a counselor to determine what type of treatment that he needed. *Tr.* at 54. The Individual was referred to this counselor through a Workplace Referral Program (WRP) provided through his employer. *Ex. A* at 4–7. He stated the counselor told him that “she felt like [he] was sincere,” and that his situation regarding his substance misuse “was a little different than most cases she sees.” *Id.* at 65. He stated that she emphasized to him the risks and reasons that he should not take prescription drugs unless they are prescribed to him. *Id.* The Individual stated that, at the end of the assessment, the counselor referred him to a drug and alcohol awareness course, which included an online option, and he took a four-hour online course to complete her only requirement. *Id.* at 54, 63; *See Exhibit A* at 1 (email from the Individual's Substance Abuse Professional (SAP) counselor stating she will be notifying his employer of his successful completion of the course, and she will close his case). He said that the class emphasized the consequences of taking prescription medications that are prescribed to another because they can put “your job and your livelihood . . . at risk.” *Id.* at 66.

The Individual testified that, in hindsight, he knows he should not have taken the medication from his mother. *Id.* at 50. He also said that he had not previously taken prescription medication that was not prescribed to him and will not in the future. *Id.* at 59, 72–73. The Individual stated that he experienced back pain two or three times a year if he does heavy lifting at work. *Id.* at 70. He stated that, in the future, if the pain occurs while he is doing physical labor for his job, he will ask for help and that his superiors support employees asking for help with physical labor when needed. *Id.* at 71–72. He stated that he also plans to avoid activities that he knows will strain his back, and if his back hurts he will rest or use over-the-counter medication, which he asserted has been successful in alleviating his pain. *Id.* at 71, 73–74.

## **V. Analysis**

Conditions that could mitigate security concerns under Guideline H include:

- (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.

Adjudicative Guidelines at ¶ 26.

The Individual's substance misuse occurred approximately three months prior to the hearing so I cannot find that it happened "so long ago" that it is "unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment." *Id.* at ¶ 26(a). While the Individual asserted that the prescription drug misuse was a one-time occurrence, he did not present any other testimonial evidence to corroborate his story, other than the negative June 2023 test he was required to undergo pursuant to his agreement with his employer.<sup>5</sup> Although the Individual testified that the counselor stated that he was "different from most cases she sees," this statement was not corroborated by any testimony or even a written statement from the counselor herself. Thus, I cannot find that the Individual's testimony, in combination with one negative drug test, is sufficient to determine that the misuse of this prescription drug occurred under such circumstances that it is unlikely to recur. *Id.* at ¶ 26(a).

Additionally, the Individual testified that he regularly suffers from back pain, including in the course of his work. Thus, it is likely that he will experience back pain again in a situation where he is not in his own home. The decision to accept an unknown medication without question reflected the Individual's poor judgment. The Individual asserted that, in the future, he will not take medication that is not prescribed to him, and he also signed an agreement with his employer acknowledging that doing so would result in termination. However, the Individual did not present any signed statements or witness testimony from people who knew him on a personal level and could speak to his conduct outside of the workplace. The Individual's mere statement of intent not to misuse prescription drugs, absent sufficient evidence that he has acted consistently with that intent, does not leave me without any doubt that his prior poor judgment will not recur. For the above-described reasons, I find that the Individual has not mitigated the security concerns pursuant to mitigating condition (a). *Id.* at ¶ 26(a).

Regarding mitigating condition (b), the Individual did acknowledge his drug involvement and substance misuse; however, he did not do so until after his drug test result showed that he tested positive for oxycodone. He also provided proof that he completed a four-hour drug and alcohol class. However, despite the passage of three months between the Individual's positive test and the hearing,

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<sup>5</sup> While I presume that the results of the "couple" of random drug tests administered to the Individual in approximately 2020 and 2021 may have been negative, I am unable to make such a definitive finding or reach such conclusion from the developed record.

he only provided results from one negative drug test in June 2023, and he did not provide any testimony from a witness who could corroborate his abstinence, other than a former supervisor whom he does not interact with regularly. Without any other corroborating evidence, I cannot find that the Individual has established a “pattern of abstinence.” As such, I find that the Individual has not mitigated the security concerns under mitigating condition (b).<sup>6</sup> *Id.* at ¶ 26(b).

Although it is quite possible that the Individual’s use of his mother’s medication was a one-time incident due to a momentary lapse in judgment, the Individual has not sufficiently mitigated the security concerns due to the lack of evidence to support his assertions. Moreover, 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, I cannot find that the Individual has provided sufficient evidence to show that he has mitigated the security concerns.

For the forgoing reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline H.

## **VI. Conclusion**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines 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 not 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 not be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon  
Administrative Judge  
Office of Hearings and Appeals

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<sup>6</sup> Mitigating condition (c) is inapplicable because the Individual does not contend that he was prescribed the medication in connection with a severe or prolonged illness. *Id.* at ¶ 26(c). Mitigating condition (d) is also inapplicable to the facts of this case. While the Individual completed a four-hour online drug and alcohol course, there is no evidence that this educational course constituted a drug treatment program, and furthermore, he did not provide a favorable prognosis by a duly qualified medical professional.