

Pursuant to a request by the local security office (LSO), a DOE-contractor psychologist (DOE Psychologist) examined the Individual in December 2012 as to the Individual's self-reported usage of Oxycodone. In his report regarding the examination (December 2012 Report), the DOE Psychologist diagnosed the Individual as suffering from Opioid-Related Disorder, Not Otherwise Specified (ORD)² and Anxiolytic-Related Disorder (Xanax), Not Otherwise Specified (ARD). Ex. 4 at 2, 10.

After reviewing the December 2012 Report, the LSO determined that derogatory information existed that cast into doubt the Individual's eligibility for access authorization. The LSO informed the Individual of its determination in a January 2013 letter (Notification Letter). The Notification Letter also informed the Individual that his security clearance was suspended and that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director appointed me as the Hearing Officer. The DOE introduced 10 exhibits into the record of this proceeding and presented the testimony of the DOE Psychologist. The Individual introduced 10 exhibits and presented the testimony of four witnesses in addition to his own testimony.

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites paragraphs (h) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criterion H). Ex. 1.³ The Individual does not dispute the factual accuracy of the Criterion H derogatory information described in the Notification Letter. I set forth my factual findings below.

In his December 2012 Report, the DOE Psychologist found that, as a result of the Individual's pain-management treatment, the Individual was experiencing tolerance to and became physiologically dependent on Oxycodone. Ex. 4 at 8. This phenomenon would be expected from anyone using high doses of Oxycodone. Ex. 4 at 8. The DOE Psychologist did not believe that the Individual suffered from opioid dependence but may have developed hyperanalgesia, a physiological response to chronic pain therapy where the body develops an increased sensation of pain. Ex. 4 at 9. Given these facts, the DOE Psychologist diagnosed the Individual as suffering from ORD. Ex. 4 at 9. Because the same physical phenomenon was occurring with the Individual's use of a prescribed anti-anxiety drug, Xanax, the DOE Psychologist also determined that the Individual also suffered from ARD. Ex. 4 at 9. The DOE Psychologist found that both disorders could cause a significant defect in judgment and reliability.⁴ Ex. 4 at 11.

² Opioids are semi-synthetic drugs, such as Oxycodone, that have similar therapeutic effects to drugs derived from Opium, such as Morphine.

³ Criterion H refers to information indicating that an individual suffers from "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8 (h).

⁴ There is no evidence before me that the Individual used his prescribed Oxycodone and Xanax in a manner other

The DOE Psychologist also noted in the December 2012 Report that, at the time of his examination, the Individual had just recently completed the IOP. Ex. 4 at 10. He found that the Individual's IOP was "solid" and that the Individual was participating in a 12-step program along with psychotherapy and avoiding all mind-altering substances. Ex. 4 at 11. However, he opined that the Individual's rehabilitation was "early and fragile," especially in light of the fact that the Individual still suffered from significant continuing pain. Ex. 4 at 10-11. The DOE Psychologist opined that, in order for the Individual to adequately demonstrate rehabilitation from his prescription drug disorders, the Individual should maintain his current plan of recovery for a period of six months. Ex. 4 at 11.

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines)*, Guideline H. Given the DOE Psychologist's opinion indicating that the Individual suffers from ORD and ARD, disorders that could cause a significant defect in judgment or reliability, the LSO had sufficient grounds to invoke Criterion H.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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 regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

than which his pain-management physician directed.

After reviewing the evidence before me, I find that the Individual has resolved the Criterion J concerns raised by the DOE Psychologist's diagnoses of ORD and ARD. The Individual testified that his visit with the Occupational Health Psychologist led him to ponder whether he was being appropriately medicated by his pain-management physician. Tr. at 89-90. The Individual decided to undergo treatment for his increasing use of Oxycodone and Xanax because of his realization that he was not feeling any better with his then pain-management treatment program. Tr. at 88-89. After undergoing a five-day medical detoxification program at the IOP facility, the Individual began the 60-day IOP program where the Individual attended daily group therapy and Narcotics Anonymous (NA) meetings.⁵ Tr. at 90. During the IOP, the Individual, to save commuting time, moved into the residential facility at the IOP which was governed by strict rules regarding conduct. Tr. at 92. The Individual obtained a sponsor (Sponsor) while participating in the IOP and currently works the 12 steps with his Sponsor. Tr. at 97-98. The Individual completed the IOP program in November 2012 but believes that he will continue in the recovery process for the rest of his life. Tr. at 98; *see* Ex. D (IOP psychologist certifying the Individual's completion of IOP and opining that the Individual has "excellent" prognosis). The Individual attends a minimum of three NA meetings a week and checks in with the IOP facility once a week. Tr. at 100-01; *see* Ex. J (Individual's NA meeting attendance records). The Individual's last use of prescription Oxycodone, Xanax, alcohol, or any other mood-altering substance occurred in September 2012 and his intention is to never use such substances again. Tr. at 100-01. As part of his recovery plan, the Individual proactively informs his doctors regarding his problem with prescription drugs and his wish that such drugs be used on him only in situations where he is in excruciating pain or in a life-threatening situation. Tr. at 105. His baseline level of pain is now significantly less than it was prior to his treatment at the IOP and he now treats his pain with non-prescription pain relievers, such as Ibuprofen, or with physical techniques such as stretching, or exercises. Tr. at 105, 114.

The Individual's Sponsor testified that he began sponsoring the Individual in December 2012. Tr. at 11. He speaks to the Individual twice a week and goes to meetings with the Individual two or three times a week. Tr. at 11. The Sponsor is working through the 12 steps of NA with the Individual. Tr. at 11-12. He believes that the Individual has a great deal of humility and courage and has been eager to learn more about addiction. Tr. at 17. In the Sponsor's opinion, the Individual is doing everything he needs to do to stay away from prescription pain or anxiety medication. Tr. at 21. In the four and one-half months the Sponsor has observed the Individual, he has not seen any evidence of the Individual using prescription pain medication. Tr. at 29, 31-32. The Individual is very reliable and, when the Individual informs the Sponsor that he can't be at a meeting, he also sends a text message explaining why he couldn't attend the meeting. Tr. at 23. The Sponsor witnessed the Individual receive his six-month [abstinence] key tag and was excited for the Individual since many NA members will fail to remain abstinent after 90 days. Tr. at 24.

The Individual's father (Father) testified that the Individual's entire family was supportive of the Individual's decision to seek treatment for his problem at the IOP and participated in the program with the Individual. Tr. at 48-52; *see* Ex. B. The Individual has lived with his family since completing the IOP and the Father has not observed the Individual use narcotic pain medication since entering the IOP at 55. Overall, the Individual is now a happier person. Tr. at 57-58. The Father believes that the Individual now deals with pain better and uses a variety of non-medicinal techniques, such as relaxation and stretching, to reduce his pain. Tr. at 59-60. If

⁵ NA is a 12-step program similar to Alcoholics Anonymous. Tr. at 28.

he or the Individual's mother noticed anything different with the Individual, they would not hesitate to intervene. Tr. at 61-62. One of the Individual's friends (Friend) testified that he was unaware that the Individual had such a problem with prescription drugs when the Individual first discussed the problem with him. Tr. at 70-71. After the Individual returned from the IOP, the Friend noticed that the Individual became more outgoing and seemed more like the person he was before the injury to his back. Tr. at 71-72. The Friend goes with the Individual to a number of sporting events and the Individual eats dinner with the Friend and his family two or three nights a week. Tr. at 74-75. The Individual and the Friend's family now go to the same church. Tr. at 75. As an indication of their faith in the Individual, the Friend and his wife both trust the Individual to care for their daughter. Tr. at 75. The Friend has never observed the Individual consume alcohol. Tr. at 75. In the Friend's opinion, the Individual will not go back to using prescription pain medications because of the Individual's belief that using those medications would make him feel physically worse. Tr. at 77-78. The Individual's supervisor (Supervisor) testified that the Individual's work performance was satisfactory. Tr. at 39, 46; *see* Ex. I ("average" and "above-average" performance evaluations). Further, the Supervisor testified that, in the almost three years he has known the Individual, he has never received a report of the Individual being intoxicated on the job. Tr. at 39-40.

After listening to all of the testimony, the DOE Psychologist opined that the Individual has demonstrated adequate evidence of rehabilitation to his prescription drug problems. Tr. at 133. In this regard, the DOE Psychologist believes that the Individual has successfully completed the IOP and has gained increased knowledge about his medication problem. He also testified as to his opinion that the Individual has a strong relapse plan and has a number of techniques to deal with his pain. Tr. at 128. Further, the Individual has completed all of the DOE Psychologist's recommendations regarding treatment. Tr. at 128. The DOE Psychologist does not now see any problems with the Individual's judgment or reliability. Tr. at 129.

Based upon the evidence in the record, including the DOE Psychologist's testimony that the Individual has complied with the treatment recommendations set out in the December 2012 Report, I find that the Individual has resolved the concerns raised by the Criterion L derogatory information contained in the Notification Letter. My finding is also supported by the convincing testimony presented by the Individual and the other witnesses regarding the quality of the Individual treatment programs and the fundamental changes that the Individual has made to deal with his chronic pain condition.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the DOE's security concerns under Criterion H. Therefore, the Individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should restore the Individual's access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: May 2, 2013

