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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: February 19, 2013 ) Case No.: PSH-13-0020  
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Issued: May 31, 2013

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**Hearing Officer Decision**  
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Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. On August 6, 2012, she attempted to commit suicide, and was subsequently admitted to a local hospital for treatment and observation. Because these events raised security concerns, the local security office (LSO) summoned the individual for a Personnel Security Interview (PSI) in September 2012. During that PSI, the individual was referred to a DOE consultant psychologist (DOE psychologist) for an agency-sponsored evaluation.

On January 10, 2013, after reviewing the DOE psychologist’s report, the transcript of the PSI, and the rest of the individual’s personnel security file, the LSO sent the individual a letter (Notification Letter) advising her that the DOE possessed reliable information that created substantial doubt regarding her eligibility to hold an access authorization. In an attachment to

<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.

the Notification Letter, the LSO explained that the derogatory information fell within the purview of 50 U.S.C. § 435c (the Bond Amendment) and four potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), (k) and (l) (Criteria H, J, K and L, respectively).

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing, the individual presented her own testimony and that of three witnesses, including her fiancé and two co-workers/friends. The DOE counsel presented the testimony of the DOE psychologist. Both the DOE Counsel and the individual submitted a number of written exhibits prior to the hearing.

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

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's continued eligibility for access authorization. The information noted in the letter specifically cites to the Bond Amendment and Criteria H, J, K and L.

The Bond Amendment provides, in pertinent part, 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. § 435c(b). As support of its invocation of this amendment, the Notification Letter cites the individual's misuse of her son's prescription Vicodin on August 6, 2012, during her suicide attempt.<sup>2</sup>

Criterion (H) defines as derogatory information indicating that an individual has an illness or mental condition which, in the opinion of a licensed clinical psychologist, causes or may cause a significant defect in her judgment or reliability. In this case, the Notification Letter cites diagnosis of the DOE psychologist that the individual suffers from Major Depression, Recurrent, Panic Disorder without Agoraphobia, Possible Prolonged QT; and Alcohol Abuse, conditions which, she opined, causes or could cause a significant defect in the individual's judgment or reliability.

Criterion (K) pertains to information indicating that the individual has transferred, possessed or used a drug listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970, except as prescribed or administered by a physician or otherwise authorized by federal law. In support of this Criterion, the Notification Letter cites the individual's admission that she misused her son's prescription Vicodin on August 6, 2012, and her supervisor's prescription Ativan in June 2011.

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<sup>2</sup> On August 12, 2009, the DOE Deputy Secretary issued DOE Notice 470.5, which implemented the Bond Amendment in the DOE. In that Notice, the Deputy Secretary, among other things, asserted that persons subject to the Bond Amendment (1) will continue to be processed for Administrative Review in cases where the Agency is unable to "waive" the Bond Amendment; and (2) will receive the same due process rights that existed before the implementation of the Bond Amendment.

Criterion (J) defines as derogatory information indicating that the individual has been, or is a user of alcohol habitually to excess, or has been diagnosed by a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Under this Criterion, the Notification Letter refers to the diagnosis of the DOE psychologist that the individual suffers from Alcohol Abuse, as well as to several admissions by the individual regarding her excessive use of alcohol.

Under Criterion (L), information is derogatory if it tends to show that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation or duress which may cause her to act contrary to the best interests of national security. Under this Criterion, the Notification Letter cites the fact that the individual signed three separate DOE Security Acknowledgements, certifying that she understood that the use of any illegal drug could result in the loss of her security clearance. It also alleges that she violated the terms of a DOE Drug Certification that she signed on January 8, 1993, when she intentionally misused her son's and her supervisor's prescription drugs.

This derogatory information adequately justifies the DOE's invocation of Criteria (H), (J), (K) and (L), and raises significant security concerns. Conduct involving questionable judgment, untrustworthiness, or unwillingness to abide by rules and regulations could indicate that a person may not properly safeguard classified information. Improper or illegal involvement in drugs may also indicate that a person may be unable to safeguard such information. Emotional and mental disorders are security concerns because they may indicate a defect in judgment, reliability, or stability. Also, excessive consumption of alcohol is a security concern because this behavior can lead to the exercise of questionable judgment and the failure to control impulses. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E, G, H, and I (Adjudicative Guidelines).*

### **III. Regulatory Standards**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate 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 or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise the national security. 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 material factors. 10 C.F.R. § 710.9(c).

The purpose of a DOE administrative proceeding under 10 C.F.R. Part 710 is to provide the individual an opportunity to submit information in support of her 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. Findings of Fact and Analysis**

At the hearing, the individual did not dispute the allegations in the Notification Letter. Instead, she attempted to demonstrate, through her testimony and that of her witnesses, that she does not suffer from a significant defect in judgment and reliability, and that the two incidents of illegal usage of prescription drugs were caused by her emotional state at the time and that this behavior is unlikely to recur.

##### **A. Criteria (H) and (J)**

The Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions. Those factors include information indicating that: (i) the condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment program; (ii) the individual has voluntarily entered into, and is participating in, a counseling or treatment program for a condition that is amenable to treatment, and has received a favorable prognosis by a duly qualified mental health professional; (iii) there is a recent opinion by a duly qualified mental health professional retained by, or acceptable to, the U.S. Government that the individual’s condition is under control, or in remission, and has a low probability of recurrence; (iv) the individual’s condition is temporary and has been resolved, with the individual showing no current signs of emotional instability; and (v) there is no indication of a current problem. *See Adjudicative Guidelines, Guideline I, ¶ 29.*

At the outset, I note that the favorable testimony of the DOE psychologist establishes the existence of mitigating factor (iii), and, along with the testimony of the individual, convinces me that she has adequately addressed the DOE’s security concerns under Criteria (H) and (J). The individual has a past history of alcohol use, depression and anxiety. DOE Exh. 4. According to the individual, she began drinking on the weekends with friends in high school. From 1999 to 2003, the individual admitted that she would drink two to three glasses of wine nightly on Sunday through Thursday, one bottle of wine on Friday and up to two bottles of wine on Saturday, becoming intoxicated every weekend. *Id.* From 2003 to 2008, the individual reported that she would consume a bottle of wine every Friday and two bottles of wine every Saturday. She further reported that beginning in 2010, she would consume a bottle of wine on a Friday evening as well as several mixed drinks on Friday and Saturday night. From August 2012 to September 2012, the individual admitted that she consumed one bottle of wine everyday to self-medicate. *Id.*

The individual has also had a past history of depression and anxiety. She acknowledged that at the age of 18, she underwent a brief period of situational depression when her boyfriend broke up with her and she impulsively took three over-the-counter sleeping pills. *Id.* The individual described this incident as an impulsive act of an “immature person” rather than a “real” suicide

attempt. *Id.* In 2007, she experienced high stress at work and broke out in hives all over her body. As a result, the individual was out of work for approximately four weeks. Since that time, the individual has had a couple of panic attacks at work after “stressful” confrontations with a supervisor. She has also attempted suicide on one occasion. Specifically, on July 20, 2012, the individual had a panic attack after a confrontation with her supervisor. The individual who described herself as once “close to” and highly praised by her supervisor, stated that her supervisor suddenly became hostile and cold towards her. After a confrontation over a timecard, the individual had a panic attack and fainted. *Id.* As a result, she was taken to the hospital and placed on disability leave without pay. On August 6, 2012, as a result of stress at work, the death of her ex-father-in-law and a tense relationship with her son, the individual attempted suicide by drinking alcohol while using her own prescription of Xanax and using her son’s prescription for Vicodin. She was taken to a hospital where she was diagnosed with Major Depressive Disorder. The individual has been seeing a therapist twice a week since the suicide attempt. She currently takes medication to treat her depression and anxiety, including Effexor for depression and Xanax as needed for anxiety. *Id.*

During the hearing, the individual testified about her alcohol use and anxiety. She testified that a number of stressful events, including a family loss, her abusive ex-husband, a strained relationship with her son, and a tense relationship with her former supervisor, led up to her July 2012 panic attack and August 2012 suicide attempt. Tr. at 84. The individual further testified that she is now in a better place, with a “better mind-set.” *Id.* at 98. She stated that she now understands that she must remain within the boundaries of a working relationship with her supervisor. According to the individual, this approach has worked for her and she has a good relationship with her current supervisor. The individual also testified that her relationship with her son has greatly improved and that she has a great deal of support from her fiancé. In regards to her alcohol use, the individual stated that she now takes notice of how much she is drinking, only consuming wine on holidays or special events. The individual, who is currently dealing with a serious health issue, testified that she is very much aware of her alcoholic intake and how it could affect her health. She believes that her past consumption was a “numbing” medication for her stressors, and she no longer has the urge to drink. The individual noted that when she received her current health diagnosis a month prior to the hearing, she did not drink alcohol or feel the need to take anti-anxiety medication. *Id.* at 115. She attributes this change in her behavior to now being “on the right track,” and to the emotional support she receives from her fiancé and her family.

The individual’s fiancé, who has known the individual for 20 years, testified that the individual is now in a good mental state and has a healthy outlook on life. *Id.* at 19. He further testified that the individual has a better relationship with her son, gets along with her ex-husband and has a good working relationship with her current supervisor. *Id.* With respect to her alcohol consumption, the fiancé stated that the individual has significantly limited her drinking since November 2012, only drinking a few drinks on the weekends. *Id.* at 22. He believes that her previous drinking habits were self-medicating. *Id.* at 24. Both of the individual’s co-workers/friends, who were aware of the individual’s past issues, testified that the individual has dealt well with her past stressors. *Id.* 52 and 63.

After listening to the individual and her witnesses' testimony, the DOE psychologist testified that she would not change her recommendations for the individual with respect to her diagnoses, stating that, given the individual's physical and mental health, it makes sense for the individual to abstain completely from alcohol or at the very least cut down on her consumption. Tr. at 148. The DOE psychologist noted that the individual has already taken steps to do this. She also testified that she would not change her recommendation for the individual to continue with therapy. *Id.* at 150. When asked about the individual's risk of relapse, the DOE psychologist testified that the individual presents an "acceptable risk, with a caveat of abstinence" because alcohol would make the individual more vulnerable to depression. *Id.* at 152. However, the DOE psychologist clarified her testimony by stating that if the individual abstains, continues to attend therapy and maintains her support systems, she has a low risk of relapse. *Id.* at 153. She explained that her confidence is "high" that the individual "will be fine," but also added that the individual will always be vulnerable to depression. *Id.* She reiterated that the individual has taken all the right steps to address her conditions. *Id.* at 154.

The DOE psychologist further testified that with respect to the individual's two diagnoses, she did not believe these mental conditions currently cause a significant defect in her judgment and reliability. *Id.* She testified that the individual is in "a different place" than she was in November 2012, when the DOE psychologist evaluated her. *Id.* at 155. The DOE psychologist stated that during her evaluation, the individual was "quite" depressed, scoring a high score on the Beck Depression Inventory. She noted that the individual does not appear to be depressed now and is not consuming alcohol in the same way. Finally, when questioned about the significance of the individual's suicide attempt, the DOE psychologist testified that although a suicide attempt is a significant event, it is also significant that it occurred while the individual was drinking. She reiterated that the individual is drinking a lot less now. *Id.* at 160. She also testified that she believes the individual is well-equipped to handle a future panic attack, noting that the individual is vigilant about taking and keeping her medication with her. *Id.* at 164.

After reviewing all of this testimony, I agree with the DOE psychologist that the individual's risk of relapse is acceptably low, and that her conditions do not currently cause a significant defect in her judgment and reliability. As an initial matter, the individual has substantially reduced the stressors in her life that led to her most recent panic attack and attempt to commit suicide. She has attended therapy sessions to help her cope and deal with her stress, has resumed a good relationship with her son, and no longer works in a tense environment with her former supervisor. Although the individual is now facing a recent health diagnosis, she has a strong support system in place to assist her. In addition, with respect to alcohol, the individual has significantly reduced her consumption, no longer has an urge to drink and is committed to abstaining from alcohol and attending alcohol counseling as the DOE psychologist recommends. I am convinced that the individual's past alcohol consumption was linked to her depression which is now well-managed. For these reasons, I find that the individual has successfully addressed the DOE's security concerns under Criteria (H) and (J).

#### **B. Criteria (K) and (L) and the Bond Amendment**

I reach a similar conclusion with regard to Criteria (K) and (L) and the Bond Amendment. The *Adjudicative Guidelines* that pertain to the individual's improper usage of prescription drugs

during her suicide attempt and on another occasion during a panic attack, as well as her violation of a DOE Drug Certification and DOE Security Acknowledgments, all provide that the isolated nature of the conduct, unusual circumstances leading up to the conduct, and the likelihood that the conduct will not be repeated, can act as mitigating factors. *See Adjudicative Guidelines E, H and J.*

The individual improperly used prescription drugs on two separate occasions. She used her supervisor's prescription Ativan once in June 2011 during a panic attack, and she used her son's prescription Vicodin once on August 6, 2012, during her suicide attempt. During the hearing, the individual explained that the June 2011 panic attack resulted from the amount of anxiety she had about an important work project, and she did not have her own prescription of Xanax with her. According to the individual, her supervisor offered her one of her prescription anti-anxiety medication pills. Tr. at 75. The individual testified that at the time she did not think about the consequences of taking the medication, or whether doing so was illegal, as she was having heart palpitations and felt as if she was going to "drop." She further testified that within ten minutes of taking one of her supervisor's pills she felt calmer. *Id.* Similarly, the individual testified that on August 6, 2012, she had just had an argument with her son who threatened to keep her from her granddaughter. She was also dealing with a tense and hostile working relationship with her former supervisor against whom she also had filed a sexual harassment claim. The individual testified that the stress caused by these events led her to attempt suicide by taking her own Xanax, drinking a bottle of wine and taking one of her son's prescription Vicodin pills. Considering these facts, I conclude that the individual's use of her supervisor's and son's prescription medications happened under unusual circumstances that are unlikely to recur in the future; and to the extent that the behavior raised security concerns under Criterion K, I conclude that such concerns have been successfully mitigated. I further conclude, for the same reasons, that the individual is not "an unlawful user of a controlled substance or an addict," within the meaning of the Bond Amendment. *See id.; Personnel Security Hearing, Case No. TSO-0938 (2010).*

Similarly, the concerns raised under Criterion L are each tied to the individual's improper use of prescription medications on two occasions which, as noted above, occurred under unusual circumstances unlikely to recur in the future. There is ample evidence in the record establishing that the individual is a very honest, reliable, and trustworthy person, both professionally and personally, who can be relied upon to exercise good judgment, and who follows laws and rules. *See, e.g.,* Tr. at 11, 52, and 63 (testimony of individual's fiancé, co-workers/friends). In addition, the individual testified that she is now always prepared for a potential panic attack with her own medication. With respect to the individual's violation of the 1993 Drug Certification and the DOE Security Acknowledgments, the individual testified that during the two improper prescription drug uses cited above, neither the illegality of the uses nor her previous written commitments to the DOE were at the "forefront" of her mind because she was in a compromised emotional state. Now, however, as noted above, the individual's mental state is stable, and she has since admitted that she made poor decisions regarding the improper use of prescription medications. Again, because the individual's violations of her previous written commitment to the DOE occurred under such unusual circumstances, I consider them lapses in otherwise general good judgment that do not cast doubt on her future honesty, reliability and trustworthiness. For

these reasons, I find that the individual has resolved the Criterion L concerns cited in the Notification Letter.

**V. Conclusion**

I find that no valid security concerns remain regarding the Bond Amendment and Criteria (H), (J), (K) and (L). I therefore conclude that the individual has demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's security clearance should be restored. Any party may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Hearing Officer  
Officer of Hearings and Appeals

Date: May 31, 2013