

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearing and Appeals

In the Matter of Personnel Security Hearing)
)
 Filing Date: May 2, 2012)
)
)

Case No.: PSH-12-0046

Issued: August 6, 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual's security clearance should not be restored.²

I. BACKGROUND

The individual works for a Department of Energy (DOE) contractor and holds a DOE access authorization, now in suspension. During 2009 through 2011, the individual used hydrocodone other than as directed and was consuming increasing amounts of alcohol. In October 2011, he voluntarily admitted himself into a substance abuse program at a local hospital. Upon discharge from the hospital, a psychologist diagnosed the individual with alcohol and opioid dependence.

¹ 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Because this information raised concerns about the individual's continued eligibility for access authorization, the local security office (LSO) called him in for an interview with a personnel security specialist. After the Personnel Security Interview (PSI) failed to resolve those concerns, the LSO referred the individual to a DOE-sponsored psychologist (DOE psychologist) for an evaluation. The DOE psychologist submitted a written report based on this evaluation to the LSO.

After reviewing this report and all of the other information in the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a Notification Letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 13 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist. The individual introduced seven exhibits into the record and presented the testimony of four witnesses in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. Derogatory Information

The individual provided most the following information during his PSI and his psychological evaluation; the remainder was obtained from medical records created during his treatment at the substance abuse program. In 1998 and 2001, the individual was arrested and charged with public intoxication. In 2009, the individual was prescribed hydrocodone to treat a neck injury. At about the same time, he began consuming alcohol in increasing amounts, after having been abstinent for a number of years. At first he was intoxicated many, if not all, Friday and Saturday nights, after drinking six to 12 beers. By November 2010, he was drinking daily, up to 12 beers on weekend days, and fewer during the workweek. In August 2011, he asked his doctor to discontinue his hydrocodone prescription as he was taking more than the recommended dosage and fearful he might become addicted to the substance. From August to October 2011, the individual self-treated his injury-related pain on most occasions by consuming alcohol. On two or three occasions, however, he treated his pain by obtaining hydrocodone from his mother, who had a prescription for the medication. He soon realized that could no longer control his alcohol consumption and, on October 17, 2011, sought treatment at a local hospital. During the intake evaluation, he admitted that he had used hydrocodone ten to 15 times a day during the preceding month. When released from the hospital, he was diagnosed with alcohol and opioid dependence. While he last consumed alcohol on October 16, 2011, before he began his treatment, he has taken hydrocodone by prescription since his hospitalization, following injuries sustained in November 2011 and January 2012. The DOE psychologist evaluated the individual in January 2012, at which time he concluded that the individual met the criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV-TR), for alcohol and opioid dependence.

B. The Notification Letter

In large part, this derogatory information forms the basis for the allegations set forth in the Notification Letter. These allegations pertain to paragraphs (h), (j), and (k) 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 refers to information indicating that the individual has an illness or mental condition of a nature that, in the opinion of a licensed clinical psychologist, “causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). As support for invoking this criterion, the Notification Letter cites the DOE psychologist’s January 2012 diagnosis of alcohol and opioid dependence, in early full remission.

Pursuant to Criterion J, information is derogatory if it indicates 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 suffering from alcohol abuse.” 10 C.F.R. § 710.8(J). Under this criterion, the Notification Letter cites the hospital psychologist’s diagnosis of alcohol dependence. The Notification Letter also cites the individual’s admissions at his PSI that he sought treatment because he realized he could not control his drinking; that he was intoxicated two nights every weekend from 2009 to November 2010 and drank alcohol daily from November 2010 to October 2011; that alcohol had caused serious problems in his marriage, that he hid his drinking from his wife, and that he continued to drink despite the problems his drinking had caused. Finally, the Notification Letter also cited his 1998 and 2001 arrests for public intoxication.

Criterion K applies to information that indicates that the individual has possessed, used, or experimented with “a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician . . . or otherwise authorized by Federal law.” 10 C.F.R. § 710.8(k). As support for invoking this criterion, the Notification Letter cited the hospital psychologist’s diagnosis of opioid dependence and the individual’s admissions during his PSI that he had taken more hydrocodone than was prescribed to him and that he had used hydrocodone prescribed for another person.

The Notification Letter also refers to the “Bond Amendment,” 50 U.S.C. § 435c, as an additional basis for the LSO’s security concerns. 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 for its invocation of this amendment, the LSO cites the same admissions the individual made at the PSI as those cited in support of its Criterion K concerns.³

³ On August 12, 2009, the DOE Deputy Secretary issued DOE Notice 470.5, which implemented the Bond Amendment at the DOE. In that Notice, the Deputy Secretary asserted, among other things, 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.

C. The DOE's Security Concerns

The derogatory information set forth in the Notification Letter adequately justifies the DOE's invocation of Criteria H, J, and K and raises significant security concerns. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Misuse of a prescription drug similarly raises questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Those concerns are heightened in this case because a psychologist has determined that the individual's alcohol dependence and opioid dependence are conditions that may impair judgment and reliability. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines), at Guidelines G, H, and I. The individual's unlawful use of hydrocodone constitutes derogatory information that, unless resolved, would bar the DOE from granting or renewing his security clearance under the Bond Amendment.

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 and unfavorable, that has a bearing on the question of whether granting or restoring the individual's 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).

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). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996), and cases cited therein. 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

A. Criteria H and J

At the hearing, the individual attempted to demonstrate rehabilitation from his alcohol dependence. He and his wife testified that several stressful life events contributed to his increased alcohol consumption. He did not deal well with his father's death. Transcript of Hearing (Tr.) at 20. He

became responsible for handling his father's property, which saddled him with financial matters and created family discord. *Id.* at 20-21. His neck injury in 2009 left him in chronic pain, for which he was prescribed hydrocodone. *Id.* His relationship with his wife grew strained as she grew fearful of his risk of potential addiction to hydrocodone. *Id.* at 22.

All of these factors caused him to drink more beer, which his wife also opposed. *Id.* at 117. He discovered that drinking beer after taking hydrocodone numbed his neck pain. *Id.* at 149. At that point, he realized he needed treatment; he recognized he had an alcohol problem, and he wanted to avoid developing a drug problem as well. *Id.* The individual voluntarily entered the substance abuse program. The wife testified that the intake worker told the individual to state the most beers he had consumed in a day, "because she explained to us that they turn people away if the amount is not significant enough." *Id.* at 99.

The individual did not fully comply with the treatment plan that was devised through the substance abuse program, which entailed an inpatient stay, three months of outpatient aftercare, and long-term participation in Alcoholics Anonymous: he completed the inpatient and outpatient portions of the treatment, but stopped attending AA after a few weeks. *Id.* at 34. The wife explained that the individual's family responsibilities leave him virtually no time to attend AA meetings. They have three school-age children, all actively involved in sports. Exhibits C, D, E, F, G. She is a full-time student, so the individual is responsible for driving the children to their respective sports events. Coupled with a workday that takes him out of the house for 12 hours a day, those duties prevent him from participating in AA. *Id.* at 27, 121. Nevertheless, the individual and his wife both testified that he has remained abstinent since entering the hospital on October 17, 2011. *Id.* at 26, 39, 161. He maintains that he has no time to drink, and that he has four "sponsors," his wife and his three children, who support him in his abstinence. *Id.* at 122-23.

The DOE psychologist testified after hearing the testimony of the other witnesses, including the individual and his wife. When asked for a prognosis for the individual that reflects any new information he garnered from the testimony he had heard, he offered the following. Because his father was an alcoholic and his mother and brother have other mental health disorders, the individual has a genetic predisposition to substance abuse that places him at high risk of relapse. His relatively short period of excessive alcohol use creates a moderate risk of relapse, though a number of factors, including reduced stressful circumstances, no evidence of cravings for alcohol, commitment to abstinence, and strong motivation for success, are in his favor. *Id.* at 176-80. His chronic pain raises the risk that he will relapse to self-medicating with alcohol. *Id.* at 182. Finally, he observed that while a number of issues the individual faces in his daily life were now causing him less stress than before, he did not demonstrate the coping skills he needs in order to face future stressful situations without resorting to alcohol or drugs. *Id.* at 178. The DOE psychologist maintained, as he did in his evaluative report (Exhibit 4), that the individual could achieve rehabilitation or reformation from his alcohol dependence as follows. Rehabilitation would require abstinence for 12 months with full compliance with his substance abuse program's recommendations, including a 12-step program like AA, with a sponsor, and counseling with a psychotherapist. In the absence of such compliance, the individual could achieve reformation from his alcohol problem with 24 months of abstinence and evidence of such abstinence, such as random blood alcohol tests. Exhibit 4 at 12-13; Tr. at 181-82. The individual had been abstinent, by the DOE psychologist's rendering, for eight months at the time of the hearing. *Id.* at 183. Because the individual has not continued to participate in AA or another 12-step program, the DOE psychologist expressed his opinion that the individual could

achieve reformation after completing 24 months of abstinence from alcohol, particularly in light of the adequate support he receives from his family and co-workers. *Id.* at 187.⁴

After reviewing this testimony and that of the other witnesses, as well as the record in this matter as a whole, I am convinced that the individual is fully committed to his recovery. However, I find that he has not adequately addressed the DOE's security concerns under Criteria H and J, because his chances of relapse to alcohol or opioid dependence at this stage of his recovery remain unacceptably high.

The treatment recommendations of the substance abuse program and of the DOE psychologist support this conclusion. In his evaluative report, the DOE psychologist stated that, though he did not recommend attempting reformation from his dependence without the use of recommended rehabilitation aids, the individual could do so by abstaining from alcohol, "opioid agents, and other psychoactive drugs, unless prescribed and supervised by a physician fully aware of his substance dependence history," for at least 24 months. Exhibit 4 at 12-13. At the hearing, the DOE psychologist considered the individual to have been abstinent for eight months, since October 2011, and would consider the individual's reformation from alcohol adequate if "he were to continue to demonstrate this kind of success with these kind[s] of supports for 24 months." Tr. at 187.

I, too, believe that eight months of abstinence from alcohol, without participation in AA or another 12-step program is insufficient to demonstrate that the individual is fully reformed. I recognize that some of the stressful circumstances in the individual's life have resolved themselves, at least to some degree. *Id.* at 178. On the other hand, he still faces some familial stress. Moreover, he has sustained injuries and has an existing medical condition for which doctors have prescribed hydrocodone three times since November 2011. Only on the latest of those three occasions, which occurred very shortly before the hearing, did the individual advise the prescribing physician of his dependence history. *Id.* at 154, 165. Therefore, as recently as January 2012, the individual obtained hydrocodone from a physician who was not "fully aware of [the individual's] substance dependence history." Although the individual testified that, on each occasion, he took only a few tablets, according to directions, and disposed of the rest of his prescription, I am concerned about the ease with which he has obtained a medication from which he has committed to abstaining. Eight months of abstinence from alcohol, particularly without rehabilitative support, is insufficient to convince me that the chances of a relapse into alcohol dependence are acceptably small. *See Personnel Security Hearing*, Case No. PSH-11-0008 (2011) (applying mitigating factors of Guideline G of the Adjudicative Guideline, six months of abstinence without completion of counseling or treatment is insufficient mitigation of security concerns). Nor does the individual's continuing use of hydrocodone convince me that his risk of relapse into opioid dependence is acceptably low, particularly without any continuing rehabilitation. *See Personnel Security Hearing*, Case No. TSO-0896 (2010) (seven months of abstinence, in doctor's care, insufficient to demonstrate adequate rehabilitation). The individual has not adequately addressed the DOE's security concerns under Criteria H and J.

⁴ With respect to the diagnosis of opioid dependence stemming from the individual's misuse of hydrocodone, the DOE psychologist testified that he still believes the diagnosis is correct. Tr. at 175-76, 184. The DOE psychologist further testified that the individual's risk of relapse to hydrocodone use parallels that of alcohol, as his greatest concern is "relapse to any substance," particularly one "that is cross tolerant with alcohol, which includes narcotics" such as hydrocodone. *Id.* at 184.

B. Criterion K and the Bond Amendment

I reach a similar conclusion regarding Criterion K. At the hearing, the individual and his wife testified that his statement, made when entering the substance abuse program, that he took 10 to 15 hydrocodone tablets a day was not accurate. Both testified that the intake interviewer inflated the individual's stated use in order to assure that he be admitted into the program. Tr. at 108, 147. At the hearing the individual declined to estimate how many pills he might have taken in a given day. *Id.* at 148. Nevertheless, he admitted to the DOE psychologist that he had developed tolerance to the pills, and was taking them together with alcohol to get the pain relief he sought. Exhibit 4 at 11; Tr. at 149. In addition, he admitted to obtaining hydrocodone from his mother, who had a prescription for the medication, after he had asked his doctor to discontinue his own prescription. *Id.* at 23, 116, 128. Both he and his mother convincingly testified that they did not know that using another person's prescription medicine is illegal, and both testified that they are fully aware of that now. *Id.* at 81-82, 86, 134-35.

The individual has made it clear that he has no intention to misuse hydrocodone in the future. He understands that it is illegal for him to take pills from his mother. He has testified that, even though he had been prescribed hydrocodone since his hospitalization, he has taken only a few pills and thrown away the rest of the prescriptions. These factors all weigh in the individual's favor. Even though there is no evidence that the individual has misused hydrocodone or any prescription drug since his October 2011 hospitalization, he has not been abstinent from psychotropic drugs long enough to be considered reformed or rehabilitated from his opioid dependence, as noted in the above section. Until the individual achieves rehabilitation or reformation from his dependence, the risk of continued misuse of a controlled substance remains significant.

Consequently, I find that the individual has not adequately addressed the DOE's security concerns under Criterion K. I also find that the individual has not mitigated concerns that the bond Amendment bars him from holding a DOE access authorization. In other circumstances, Hearing Officers have concluded that an individual's misuse of a prescription drug was an isolated incident and unlikely to recur. *See, e.g., Personnel Security Hearing*, Case No. PSH-12-0049 (2012). In the present case, however, because I find that the risk that the individual will once again misuse prescription drugs is not yet sufficiently low, I conclude that the individual must still be considered, under the Bond Amendment, an unlawful user of a controlled substance., to whom a "federal agency may not grant or renew a security clearance." 50 U.S.C. § 435c(b).

VI. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns under Criteria H, J, and K of 10 C.F.R. Part 710 and the Bond Amendment, and therefore has not 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 individual's security clearance should not be restored. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: August 6, 2012