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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: January 10, 2018) Case No.: PSH-18-0005
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Issued: March 19, 2018

Administrative Judge Decision

Gregory S. Krauss, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX XXXXX (hereinafter referred to as “the individual”) for access authorization under the Department of Energy’s (DOE) 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 be restored.²

I. Background

The individual is an employee of a DOE contractor in a position that requires her to hold a security clearance. She has held a security clearance since 2011. In 2017, the Office of Personnel Management (OPM) was in the process of conducting a reinvestigation of the individual’s eligibility for a security clearance. During an interview for that investigation on June 7, 2017, the individual indicated that she had used her husband’s Xanax, a prescription medication, on multiple occasions since 2008. Exhibit (“Ex.”) 8 at 49, 51. The individual further stated that she had received a prescription of Lexapro, an anti-depressant medication, from a physician in 2014. Ex. 8 at 51. In a Personal Security Interview (PSI) subsequently conducted by the DOE on September 27, 2017, the individual provided similar information regarding her use of Xanax and Lexapro. With respect to her Xanax use, she stated that had used her husband’s Xanax about once or twice a year starting around 2008 and continuing until around 2016. Ex. 7 at 50-51, 59-60, 109-110.

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(a). Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/OHA>.

Xanax, also known as alprazolam, is a controlled substance under 21 U.S.C. § 802(6). *See also* 21 C.F.R. § 1308.14 (defining alprazolam as a Schedule IV drug). The individual's admission that she had used a controlled substance that had not been prescribed to her raised security concerns that her PSI did not resolve. In addition, the individual's statements regarding her use of Xanax and Lexapro appeared to have been inconsistent with information she submitted in 2011 and 2016 when completing the Questionnaire for National Security Positions (QNSP). Accordingly, the LSO began the present administrative review proceeding by issuing a Notification Letter to the individual informing her that information in the DOE's possession had created a substantial doubt concerning her eligibility for a security clearance. The Notification Letter also informed her that her security clearance had been suspended and that, pursuant to 10 C.F.R. § 710.21, she was entitled to a hearing before an Administrative Judge.

The individual requested a hearing and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on January 11, 2018. On February 15, 2018, I convened a hearing on this matter pursuant to 10 C.F.R. § 710.25(d), (e) and (g). At the hearing, I took testimony from the individual, her husband, a close friend, her supervisor, a security official for her employer, and from four other colleagues and friends. The LSO submitted eight exhibits, marked as DOE Exhibits 1 through 8. The individual submitted four Exhibits, marked as Exhibits A through D.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require 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 denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (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 her 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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay 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. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. The LSO described its security concerns in a “Summary of Security Concerns” attached to the Notification Letter. In that document, the LSO indicated that its concerns pertained to the Bond Amendment, codified at 50 U.S.C. § 3343(b), and to Guidelines H and E of 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”).

The Bond Amendment provides that agencies “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 its Summary of Security Concerns, the LSO stated that it had identified security concerns under the Bond Amendment because the individual had admitted during her PSI to the unlawful use of Xanax, a controlled substance, about once or twice a year between 2008 and 2016. Ex. 1 at 1. The LSO did not allege that the individual is an addict. *See* Ex. 1.

Guideline H of the Adjudicative Guidelines is titled “Drug Involvement and Substance Misuse.” This Guideline provides that “[t]he illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, 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.”³ Guideline H at ¶ 24. As support for its application of Guideline H, the LSO cited the individual’s admission during her PSI that she had used a controlled substance, Xanax, which was not prescribed to her, once or twice year between 2008 and 2016. The LSO also referred to the individual’s admission that she had taken the Xanax while holding a security clearance between 2011 and 2016. Ex. 1 at 2.

Guideline E of the Adjudicative Guidelines is titled “Personal Conduct.” Under Guideline E, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Guideline E at ¶ 15. In citing Guideline E, the LSO identified as a security concern the individual’s failure to report her unlawful use of Xanax while she held a security clearance between 2011 and 2016, as well as a statement she made during her PSI that she had not been forthright about her Xanax use. Ex. 1 at 1. The LSO also pointed out inconsistencies between the individual’s statements in her PSI and her responses in the QNSPs she submitted on August 9, 2016 (“2016 QNSP”), and June 14, 2011 (“2011 QNSP”). First, the LSO noted that, although the individual admitted in her PSI to the unlawful use of Xanax between 2008 and 2016, she had certified in both QNSPs that she had not intentionally engaged in the misuse of prescription drugs. Second, the LSO cited the individual’s certification in her 2016 QNSP that in the previous seven years she had not consulted with a health care professional regarding an emotional or mental health condition. The LSO indicated that this

³ A controlled substance means “any controlled substance” as defined in 21 U.S.C. § 802. Guideline H at ¶ 24. As noted, Xanax, or alprazolam, is a “controlled substance” under 21 U.S.C. § 802(6).

statement raised security concerns because the individual admitted during her PSI to consulting with a physician in 2014 and receiving an anti-depressant medication.⁴ Ex. 1 at 2.

Based on the evidence available to the LSO, the above security concerns were sufficient to invoke the Bond Amendment and Guidelines H and E.

IV. Findings of Fact

A. Use of Xanax

Around 2008, a physician gave the individual a prescription of Xanax to treat her anxiety. Tr. at 163-164. She initially received 30 pills at a dose of 0.25 milligrams. Tr. at 165. She does not recall whether she used all of the medication or when the prescription expired. Tr. at 165. She never renewed the prescription. Tr. at 165.

The individual's husband also had a Xanax prescription. Tr. at 17; Ex. 2 at 1. As early as 2008, possibly while her own Xanax prescription was still valid, she began occasionally accepting her husband's offers to provide her his Xanax when she was unable to sleep. Tr. at 171; Ex. 7 at 59-60. Her husband's dosage was higher than her own had been and ranged from 0.5 milligrams to 1.0 milligram. Tr. at 171. Before providing her the Xanax, her husband would break off a small piece for her to take, around a quarter of the pill and always less than a half. Tr. 173-174, 216; Tr. at 65.

On most of the occasions when her husband offered her Xanax, the individual refused it because she preferred not to rely on medication for sleep. Tr. at 172-173. She did not obtain her own prescription because she took her husband's medication so infrequently and she thought that making the medication more accessible could increase the risks of addiction. Tr. at 176. When she did decide to accept her husband's Xanax, her focus was on relieving her anxiety and on whether her symptoms were severe enough to merit taking the medication. Tr. at 178. She has claimed that she did not consider whether taking her husband's Xanax was against the law. Tr. at 177; Ex. 7 at 63. She has attributed her inattention to the "legal side" of taking her husband's medication to the private setting where she took the medication, usually in her own home and bedroom, as well as her close relationship with her husband, someone with whom she says that she shares everything. Tr. at 178, 204, 227; Ex. 7 at 62; Ex. 2 at 1. She testified that she may have recognized the unlawfulness of taking another person's prescription medication if the medication had belonged to someone other than her husband. Tr. at 178.

The individual has stated that that it was not until her OPM interview in June 2017 that she fully considered the legal implications of taking her husband's Xanax and decided to stop the practice. Ex. 7 at 56, 59-60; Tr. at 203-204. Her OPM interviewer did not tell her it was against the law, but she recognized that taking her husband's medication "really is wrong" once she had said aloud what she had done. Ex. 7 at 74. It now appears "obvious" to her that she should not have taken her husband's prescription medication. Tr. at 203; Ex. 7 at 113.

⁴ The anti-depressant medication that the LSO referred to here is, presumably, Lexapro.

With respect to the timing and frequency of her use of her husband's Xanax, the individual has provided slightly varying accounts. The OPM report records her as stating that she took her husband's Xanax about two to three times annually between 2008 and 2015. Ex. 8 at 51. During her PSI, she described the frequency as more like one or two times a year. Ex. 7 at 57. She agreed in her PSI that it "sounds reasonable" that her use of her husband's Xanax took place between 2008 and 2015. Ex. 7 at 59. At a different point in that interview, she indicated that her last use had been around 2016; specifically, she stated that it had been "at least a year" before her OPM interview in June 2017 since she had taken it. Ex. 7 at 109-110; *see also* Ex. 7 at 56.

After receiving the Notification Letter, the individual submitted a response in which she stated that the last time she had used her husband's Xanax was in April 2017, while on a trip she took to run in a marathon. Ex. 2 at 1. She testified at the hearing that she took the Xanax while on a red-eye flight to her destination because she wanted to relieve her anxiety and get some sleep in anticipation of activities the next morning. Tr. at 180-81. Her husband also testified that this was the last date on which she had taken his Xanax. Tr. at 18. When asked why she did not mention, in her PSI in September 2017, her use of her husband's Xanax in April 2017, the individual explained that during the PSI she had been recalling only the times when she had taken the medication in her own home and had not been thinking of her uses while traveling. Tr. at 223-224. She added that she did not remember the instance in April 2017 until she was preparing her request for a hearing. Tr. at 224. She testified that she was "guessing at dates" during her PSI and that she was not thinking sharply. Tr. at 170, 225.

The individual has not recalled any other specific instances when she took her husband's Xanax, other than the instance in April 2017. Tr. at 180. She did generally recall that she never took her husband's Xanax immediately prior to work, and she believes she never took it at night when she was scheduled to work the next day. Tr. at 225-226. In her response to the Notification Letter, she stated that, during her PSI, she had probably overestimated her use of her husband's Xanax. Ex. 2 at 1-2. She now estimates that she took her husband's Xanax around five times total and seven times at the most. Ex. 2 at 2; Tr. at 227. Although she may have taken her husband's Xanax as early as 2008, she also believes it is possible, even likely, that her first use did not occur until after signing her QNSP in 2011. Tr. at 169; Ex. 2 at 4.

B. Lexapro Use and Reporting

As noted, the individual has stated that a physician prescribed her Lexapro, an anti-depressant medication, in 2014. Tr. at 160; Ex. 7 at 13-14, 18. At the time, she was temporarily experiencing feelings of depression due to changes in her work and private life. Ex. 2 at 3. She used the medication every day for about a year and then discontinued her use of it. Tr. at 162. She reported her use of this drug to her supervisor and to a security manager for her employer.⁵ Tr. at 161. According to the individual, the security manager told her that it was unnecessary to report to the DOE her use of Lexapro. Tr. at 198.

⁵ At the hearing, her security manager did not recall being informed by the individual about the individual's use of Lexapro. Tr. at 63. Her supervisor did recall that she had told him about her use of this medication around 2014 or 2015. Tr. at 135, 137, 141.

In her 2016 QNSP, the individual was asked whether she had “consulted with a health care professional regarding an emotional or mental health condition . . .” Ex. 5 at 29. The question directed her to “[a]nswer ‘No’” if the counseling” fell into one of two categories.⁶ Ex. 5 at 29. The individual responded “No” despite having received a Lexapro prescription in 2014. Tr. at 190; Ex. 5 at 29. She has explained that she answered in this way because she read the question as concerning only counseling by mental health care professionals for an emotional or mental health condition, and she had not received counseling from the physician who prescribed her Lexapro. Tr. at 192-193; Ex. 2 at 3. She added that she answered her 2016 QNSP quickly and did not read the question carefully enough. Tr. at 191, 193. She has emphasized that she was forthcoming about her Lexapro use with the OPM investigator. Tr. at 192; Ex. 2 at 3-4.

C. Reporting of Xanax Use

Another question on the individual’s 2011 QNSP and 2016 QNSP asked: “In the past seven years, have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?” Ex. 5 at 30, Ex. 6 at 27. She answered “No” to this question in both instances. Ex. 5 at 30; Ex. 6 at 27.

The individual testified that she did not answer this question affirmatively in 2016 because she did not yet recognize that her use of her husband’s Xanax was a “misuse.” *See* Tr. at 186, 188. She interpreted “misuse” as referring to the use of a drug for a purpose other than the one it was intended for, such as taking a medication “to feel good and not to eliminate pain.” Tr. at 186, 214. She asserted that when she used her husband’s Xanax, she used it for its intended purpose.⁷ Tr. at 186. As to her 2011 QNSP, she indicated that her answer to the question may have been accurate because she may not have taken her husband’s Xanax until after she completed this QNSP on June 14, 2011. Ex. 2 at 4.

The individual has explained that, separately from the QNSP, she never reported her misuse of Xanax to DOE security because she did not regard her use of her husband’s Xanax to be a misuse. Tr. at 188. She never took the step of inquiring about whether she needed to report her use of the medication, as she did with Lexapro, because the use was so infrequent and she assumed she might only need to report medications that she took routinely. Tr. at 184, 186-87, 200; Ex. 7 at 133. Additionally, after reporting her Lexapro use to her employer’s security manager in 2014, she believed she did not need to report any of her prescription drug use to the DOE because the security manager had told her she did not need to report her Lexapro use. Tr. at 198; Ex. 7 at 133.

In her PSI, the individual described not being “forthright” about her use of her husband’s Xanax. Ex. 7 at 134. At the hearing, the individual was asked whether this word choice revealed that she had, in fact, recognized that taking her husband’s Xanax constituted misuse and that she had made

⁶ Specifically, the question stated that she should answer “no” if the counseling related to certain marital or family grief or if the counseling was related to adjustments following a military combat experience. Ex. 5 at 29.

⁷ The individual believes that her use of her husband’s Xanax was safe. In her PSI, she suggested that her educational background in biochemistry and the prescription she had previously received for Xanax made her confident that taking it infrequently and in small doses would not present a health risk. *See* Ex. 7 at 63-65. She testified that she did not use her husband’s Xanax during the year when she took Lexapro in order to avoid mixing medications. Tr. at 181.

a conscious decision not to inform the DOE about this misuse. *See* Tr. at 214. She replied that her use of the word “forthright” should not be given such an interpretation. Tr. at 212, 214. She explained that when she mentioned not being forthright, she was describing a decision not to share with her co-workers, not the DOE, her use of her husband’s Xanax because she did not want to give them the impression that the use was frequent. Tr. at 199, 212.

At the hearing, at least three of the individual’s colleagues testified that they were aware that taking another person’s prescription medication is prohibited and is something that a holder of a security clearance should report to the DOE. Tr. at 71, 88, 99, 203. A few colleagues suggested that their employer had distributed information stating that it was necessary for security clearance holders to report the taking of another person’s prescription medication. Tr. at 70, 100, 123. One witness also described new procedures that have been put in place by the individual’s employer that require employees to internally report to their employer their prescription drug use. Tr. at 119-120. No witness, however, could verify that the individual would have received clear instructions from her employer, prior to April 2017, not to take another person’s prescription medication and to report such conduct. Tr. at 70-71, 105, 123-124. Her supervisor further stated that he was “probably not” aware of such a reporting requirement until the hearing. Tr. at 138.

D. Additional Evidence

Each witness at the hearing described the individual as honest, reliable, trustworthy, and in possession of good judgment. Tr. at 49, 98, 117-118, 132, 150-151. One colleague called her “a very honest person, almost to a flaw.” Tr. at 86. None of the individual’s witnesses recalled her being under the influence of any drug at work. *See* Tr. at 61-62, 133.

The individual has provided support for her assertion that she will not take her husband’s Xanax or misuse prescription drugs in the future. First, there is no evidence in the record that she is addicted to any drugs. To eliminate any such concerns, the individual consulted with a therapist, who provided her a letter stating that the individual “does not meet any criteria associated with having a drug problem.” Ex. D at 1; *see also* Tr. at 183. Second, the individual visited a certified clinical nurse, who provided the individual with her own 0.5 milligram prescription of alprazolam. Ex. C at 2; Tr. at 182. The individual plans to maintain a valid prescription and use the medication a few times year. Tr. at 219-220. Third, she has learned new relaxation techniques to assist with her anxiety and reduce the need for any prescription medication. Tr. at 220. Fourth, the individual’s husband no longer has a Xanax prescription. Tr. at 35. He testified he would suggest to her that she visit a doctor if in the future she needed anti-anxiety medication but did not have her own prescription. *See* Tr. at 35.

The individual has made a promise not to misuse prescription drugs and has provided a signed statement acknowledging that her security clearance could be revoked if she engages in future drug involvement or misuse. Ex. A; Tr. at 182. She testified that “there is just no possible way that I will ever do that [misuse a prescription drug] again, because of who I am, because of the promises that I made, and because now I understand what I did wrong very clearly.” Tr. at 184. In the event she were to misuse a prescription drug, she is aware of her obligation to report that misuse. Tr. at 188.

V. Analysis

A. Bond Amendment and Guideline H

The LSO raised security concerns under the Bond Amendment and Guideline H regarding the individual's use of her husband's Xanax, including during years when she held a security clearance. With respect to the Bond Amendment, there is no evidence that the individual is currently "an unlawful user of a controlled substance or an addict" within the meaning of the Bond Amendment. Her testimony and her husband's testimony establish that she last used her husband's Xanax in April 2017. There is no evidence or even an allegation that she is an addict. Accordingly, the Bond Amendment does not operate in this case to prevent the individual from having her security clearance restored.

As to Guideline H, conditions apply that mitigate the security concerns that the LSO has raised. Guideline H provides that one such condition applies when the behavior "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." Guideline H at ¶ 26(a). Here, the evidence indicates that the individual's use of her husband's Xanax was less frequent than she initially indicated in her OPM interview and her PSI. In all, she may have used her husband's Xanax about five times and may have first used her husband's Xanax much later than 2008. This limited frequency, compared with what she initially disclosed, helps to mitigate the concerns that the LSO raised under Guideline H.

More importantly, her use of another person's prescription medication happened under circumstances that are unlikely to recur. These circumstances include her husband's repeated offers of Xanax, a medication she had previously been prescribed herself, and her failure to consider the unlawfulness of taking her husband's prescription medication for the reasons she identified in her testimony. These circumstances have changed. The individual now has her own prescription of Xanax and her husband does not have one. Moreover, she is now aware that it is unlawful for her to use his prescription medication. She and her husband are highly unlikely to repeat the same mistake. The unusualness of the circumstances surrounding her use of a controlled substance also suggests that her decision-making in this instance should not cast doubt on her overall reliability, trustworthiness, or good judgment.

A second condition that may mitigate security concerns raised under Guideline H occurs when "the individual acknowledges his or her drug involvement and substance misuse" and has taken actions such as "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." Guideline H at ¶ 26(b). Here, the individual has acknowledged her misuse of prescription drugs and has provided such a signed statement, thus mitigating the security concerns raised under Guideline H.

For the above reasons, I find that the individual has resolved the security concerns that the LSO identified pertaining to her misuse of prescription drugs.

B. Guideline E

The LSO raised security concerns under Guideline E regarding the answers the individual provided in her QNSPs in 2011 and 2016, as well as her failure to report to DOE security, while holding a security clearance, her use of a controlled substance not prescribed to her.

As noted, Guideline E provides that conduct can raise security concerns if it involves “questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations.” Guideline E at ¶ 15. The evidence indicates that although the individual may have exercised poor judgment by completing her QNSPs in a careless manner, she has not attempted to be dishonest or less than candid regarding her use of Xanax and Lexapro. The individual has offered a persuasive explanation for misinterpreting the question on her 2011 QNSP that could have revealed her Lexapro prescription. Her reporting of her Lexapro use to her supervisor and a security manager for her employer further suggests that she did not intend to conceal the consultation with the physician that resulted in this prescription. Moreover, she has explained that she certified that she did not intentionally misuse prescription drugs in her 2016 QNSP and 2011 QNSP, nor report her misuse to the DOE, because she did not recognize her use of her husband’s Xanax as misuse. She did not identify her conduct as misuse because, among other reasons, she believed she was using the medication for its intended purpose and she had not considered the unlawfulness of her actions. In addition, she now believes that she may not have first used her husband’s Xanax until after completing her 2011 QNSP. If this chronology is accurate, then any security concerns arising from her answer to this question on her 2011 QNSP would be completely resolved.

It is notable that it was the individual herself who revealed, during her OPM interview and again in her PSI, that she had used her husband’s Xanax and that she had been prescribed Lexapro in 2014. Her willingness to report this information when asked questions framed in a different manner suggests that the individual has attempted to be truthful. Furthermore, a condition that may mitigate security concerns raised under Guideline E is when “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Guideline E at ¶ 17(a). Here, the individual corrected the omissions before being confronted with the facts, thereby contributing to the mitigation of the security concerns raised by the LSO.

Although the individual stated in her PSI that she had not been “forthright” regarding her use of her husband’s Xanax, she explained in her testimony that her use of this word did not refer to an unwillingness to report misuse of prescription drugs to the DOE or an awareness that her conduct amounted to misuse, but merely that she preferred not to share this personal detail with colleagues at work. Further, while the individual neglected to recall during her June 2017 OPM interview or her September 2017 PSI that she had last taken her husband’s Xanax in April 2017, I do not attribute her failure to report this detail to a lack of candor. Her inability to recall this information must be considered in light of her overall attempt to be forthcoming during her OPM interview and her PSI by revealing her use of her husband’s Xanax and her Lexapro use. During her PSI, she also apparently overstated the frequency of her use of her husband’s Xanax and the length of that use. I do not believe it is likely that she would have simultaneously overstated the amount of her misuse yet attempted to conceal information about her last date of use.

Security concerns raised under Guideline E may be mitigated if the conduct “happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s

reliability, trustworthiness, or good judgment.” Guideline E at ¶ 17(c). For the reasons discussed in the above analysis under Guideline H, the individual’s misuse of prescription drugs occurred under unique circumstances that are unlikely to recur. Given that the underlying conduct is unlikely to recur, it is unlikely that the individual would again fail to report such conduct. Her employer’s new internal prescription drug reporting requirements should further help ensure that the individual accurately reports her prescription drug use to the DOE on any questionnaire(s) or in the unlikely event that a misuse were to occur. Witness testimony regarding the individual’s character also helps establish that her failure to make required disclosures should not cast doubt on her overall reliability, trustworthiness, and good judgment.

In short, I find that the individual has presented sufficient evidence to mitigate the security concerns raised under Guideline E.

VI. Conclusion

In the above analysis, I have found that the LSO had sufficient derogatory information to invoke the Bond Amendment and Guidelines H and E. However, after considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the individual has sufficiently mitigated the security concerns that the LSO has raised. Accordingly, the individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the individual’s security clearance should be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Gregory S. Krauss
Administrative Judge
Office of Hearings and Appeals