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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: May 30, 2013	)	Case No.: PSH-13-0069
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Issued: October 11, 2013

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

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxxx (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 him to hold a DOE security clearance. On March 4, 2013, he tested positive for amphetamines during a random drug test. Because this incident raised security concerns, the local security office (LSO) summoned the individual for a Personnel Security Interview (PSI) in April 2013.

On April 29, 2013, after reviewing 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 him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to

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<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.

hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of 50 U.S.C. § 435c (the Bond Amendment) and two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (k) and (l) (Criteria 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 his own testimony and that of nine witnesses, including an Employee Assistance Program (EAP) psychologist, his treating psychotherapist, three managers, a co-worker, two friends and his wife. The DOE counsel did not present any witnesses. 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 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 his wife's prescription drug Adderall, a controlled substance, on three occasions within the last year.<sup>2</sup>

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 he unlawfully used his wife's prescription, Adderall, on three occasions within the last year and that further, during a random drug test administered on March 4, 2013, he tested positive for amphetamines.

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 also cites the individual's admission that he unlawfully used his wife's prescription of Adderall.

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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.

This derogatory information adequately justifies the DOE's invocation of Criteria (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. In addition, improper or illegal involvement in drugs may also indicate that a person may be unable to safeguard such information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines H and J (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, he attempted to demonstrate, through his testimony and that of his witnesses, that this behavior is unlikely to recur.

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

The *Adjudicative Guidelines* that pertain to the individual's improper usage, on three occasions, of his wife's prescription drug 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 H and J.*

During the hearing, the individual acknowledged that he took a portion of his wife's prescription of Adderall on three separate occasions between mid-2012 and March 2013. Transcript of Hearing (Tr). at 178. According to the individual, on the first two occasions, he had been travelling and returned home exhausted. He testified that he was under a great deal of pressure to complete his projects at work. The individual's wife noticed his fatigue and was concerned about him driving to work in a tired state. He stated that his wife encouraged him to take a small portion of her prescription Adderall to address his fatigue. Similarly, on the third occasion, the individual testified that he had just returned home from a four-day ski trip, was exhausted and needed to prepare for several significant projects at work. *Id.* at 196 and 197. On all three occasions, the individual states that when he took a small portion of his wife's prescription Adderall, he did not know it was illegal or that it violated the conditions of his security clearance. The individual stated that on the occasions he took his wife's Adderall, he did not experience any negative effects and that the effect was almost identical to drinking coffee, without experiencing "jitters." He further testified that he now has his own prescription, five milligrams, of Adderall, the lowest dosage, because his doctor believes that he could have Attention Deficit Hyperactivity Disorder (ADHD). *Id.* at 177. However, he has not taken it nor does he anticipate taking it in the future. He noted that he has never had any cravings for Adderall, nor has he developed a dependence on the medication. *Id.* at 179.

The individual reiterated that he did not know that it was illegal to use his wife's prescription medication and testified that he has no memory of receiving written or oral training on illegal use of prescription medication. *Id.* at 185. He stated that when he took a random drug test in March 2013, it did not "register" with him that he would test positive or that his wife's medication was an amphetamine. He stated that all of his family, friends and co-workers know about the positive drug test and that he is not subject to coercion or blackmail. *Id.* at 186. The individual indicated at the hearing that, other than the three occasions at issue, he has never used illegal drugs or misused prescription drugs.<sup>3</sup> With respect to his future intentions, the individual testified that he will never use another person's prescription medication or any illegal drug in the future. *Id.* at 177.

The individual's testimony was supported by that of his wife, an EAP psychologist, and his psychotherapist. His wife corroborated the individual's testimony that he took a portion of her prescription medication on three separate occasions. *Id.* at 73. She has been prescribed Adderall for about eight years for adult ADHD. *Id.* at 72. The wife described the circumstances surrounding the individual's use of her medication. She testified that she offered the individual a portion her medication on three separate occasions when she noticed that he was "extremely tired," and suggested that he take the medication so that he could stay awake while driving. *Id.* at 75. Specifically, the individual's wife stated that on each occasion, she opened one of her medication capsules and poured about a quarter of the "beads" or about 20 milligrams into the individual's hand. *Id.* at 76 and 77. She testified that after the individual took the medication, he told her that he felt more alert. *Id.* at 78. The individual's wife asserted that she is not aware of any other time when her husband has taken her prescription medication, stating that he does not have a drug habit or use illegal drugs. *Id.* at 82. She testified that her husband usually drinks coffee to stay alert, but stopped drinking it because it made him go to the bathroom frequently. *Id.* at 83. She indicated that during the time period her husband used some of her medication, he

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<sup>3</sup> The individual testified that he experimented with marijuana in his teen years. *Id.* at 181.

was not drinking coffee. *Id.* The individual's wife further asserted that neither she nor her husband knew that it was illegal to take someone else's prescription medication. She added that she only gave her husband a very small amount of one capsule of medication on each occasion because she needs her full dose to address her ADHD symptoms. *Id.* at 86.

The EAP psychologist who monitored the individual's rehabilitation and compliance with the agreement the individual made with his employer following his positive drug test in March 2013, testified that the individual does not meet the definition of an addict and does not have a substance abuse problem. *Id.* at 43. She testified that after assessing the individual, she determined that he only needed the lowest level of treatment which consists primarily of increasing his knowledge and understanding of his behavior. *Id.* at 44. She believes the individual's misuse of his wife's medication was incidental and that he did not know that his use was illegal. The EAP psychologist further testified that the individual is very reliable and possesses high accountability. Likewise, the individual's psychotherapist<sup>4</sup>, who has been treating the individual on a weekly basis since his positive drug test and was referred by the EAP psychologist, testified that she conducted an evaluation of the individual which included psychological testing. She determined that the individual is not an addict or a substance abuser. *Id.* at 109. The psychotherapist believes the individual is fully invested in understanding what he did and that he will never misuse medication again. She testified that the individual's prognosis is excellent for not abusing drugs in the future. She stated that she continues to treat the individual for stress and anxiety. *Id.* at 110.

Considering these facts, I conclude that the individual's use of his wife's prescription medication 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 his wife's prescription medication on three 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 16, 96, 117 and 131 (testimony of individual's managers, co-workers and friends). In addition, the individual testified that he now has his own prescription for Adderall if he determines that he needs it and has no future intention of ever using another person's prescription medication. Again, in this case, the individual is remorseful for his conduct and his behavior occurred under such unusual circumstances that his behavior is unlikely to recur. *Adjudicative Guideline J* at ¶ 32 (a). After considering the "whole person," I am convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines* at ¶ (2)a. I therefore find that the individual has sufficiently mitigated the LSO's concerns under Criterion L.

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<sup>4</sup> The individual's psychotherapist is a licensed psychologist who has been practicing since 2002. She has met with the individual for about 20 sessions.

**V. Conclusion**

I find that no valid security concerns remain regarding the Bond Amendment and Criteria (K) and (L). I therefore conclude that 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, 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: October 11, 2013