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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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Case No.: PSH-15-0012

Issued: June 1, 2015

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization 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 should be granted a security clearance.²

I. BACKGROUND

The following facts are undisputed. The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on her behalf in connection with that employment. During the ensuing investigation, the local security office (LSO) obtained information about the individual that raised security concerns. In an attempt to address those concerns, the LSO summoned the individual for an interview with a personnel security specialist

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. 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.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>.

in October 2014. The information of concern related in part to the individual's March 3, 2014, suicide attempt.³

During her October 2014 Personnel Security Interview (PSI) (DOE Ex. 10), the individual described her suicide attempt and the factors that contributed to it. She said that in the months leading up to the attempt, a romantic relationship ended and she was experiencing serious difficulties as a single parent in dealing with her teenage daughter. She also had "more work than she could handle," putting in 50-60 hours a week and travelling two to three times per month for her job. DOE Ex. 10 at 103. On the morning of March 3, 2014, she decided that she "wanted to be done," and retrieved a bag of expired prescription pain medication, consisting primarily of Hydrocodone pills that had been prescribed to her and that she had been collecting to take to a "drug recycling event." She combined them with additional Hydrocodone pills that had been prescribed to her daughter, who was living with her at the time, and took them to her garage. *Id.* at 104-108. She then pulled her car into the garage, closed the garage door with the motor running, got into the car, and ingested the pills with a cup of wine.⁴ *Id.* at 108-109. The next thing that the individual remembered was regaining consciousness in the emergency room of a local hospital, after having been found in her garage by her sister and brother-in-law. *Id.* at 111.

After this PSI, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist") for an agency-sponsored evaluation. The DOE psychologist diagnosed the individual as suffering from "Persistent Depressive Disorder with intermittent Major Depressive Episodes, without a current episode, and currently of mild severity." Noting that she was receiving "appropriate" and "promising" weekly therapy, the DOE psychologist concluded that the individual is "currently not suicidal, her moods appear fairly stable, and there is an absence of depressive thought content. Her underlying depression is unlikely to cause significant defects in her judgement or reliability in the next year or two." DOE Ex. 6 at 6-9. He further concluded that the individual was not suffering from an alcohol use disorder or any other illness or mental condition which was causing, or could cause, a significant defect in her judgement or reliability. *Id.* at 9.

After reviewing the individual's personnel security file as a whole, however, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed her of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning her eligibility for access authorization.

³ The LSO also had concerns about her mental and emotional health, her alcohol use, and her failure to file state and federal tax returns in a timely manner. However, these concerns were mitigated prior to the institution of this Administrative Review proceeding. *See* DOE Exhibit (Ex.) 3.

⁴ The individual initially informed the LSO that she had taken 29 of her own Hydrocodone pills and 18 of her daughter's pills on that occasion. However, during the hearing, the individual testified that these figures were incorrect, and that she had actually consumed a total of approximately 25 Hydrocodone pills. Hearing transcript (Tr.) at 52.

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 Administrative Judge. The DOE introduced 11 exhibits into the record of this proceeding. The individual introduced two exhibits, and presented the testimony of five witnesses, in addition to testifying herself.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the LSO concluded in the Notification Letter that derogatory information exists that creates a substantial doubt as to the individual's eligibility to hold a security clearance. That information pertains to paragraph (k) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8, and to the Bond Amendment (section 1072 of the National Defense Authorization Act for Fiscal Year 2008).

Criterion (k) defines as derogatory information tending to show that the individual has "sold, transferred, possessed, used, or experimented with a . . . 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, . . . etc.) except as prescribed or administered by a physician" or otherwise authorized by federal law. The Bond Amendment prohibits federal agencies from granting or renewing the security clearances of persons who are unlawful users of a controlled substance or are addicts. As support for its invocation of criterion (k) and the Bond Amendment, the Notification Letter cites the individual's misuse of prescription drugs that is described above.

This derogatory information adequately justifies the DOE's invocation of the Bond Amendment and criterion (k), and it raises significant security concerns. Illegal use of a controlled substance can raise questions about an individual's reliability and trustworthiness, both because such usage may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline H.*

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, an Administrative Judge 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 a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

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, 24 DOE ¶ 82,752 at 85,511 (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. ANALYSIS

A. Mitigating Evidence

At the hearing, the individual attempted to demonstrate, through her own testimony and that of her former manager, a co-worker, two of her sisters, and her therapist, that her misuse of prescription drugs during her suicide attempt was an isolated incident that will not recur. The individual testified that the only time in her life that she had misused prescription drugs was during her suicide attempt. She also testified that she would never repeat this behavior because of the impact of her attempt on the people she cares about, because of the counseling that she is participating in that has helped her to address the issues that led up to the attempt, and because of a promise that she made to one of her sisters that she would not try to kill herself and an agreement that she made with her counselor that she would call him if she ever felt the urge to end her own life again. Tr. at 52-53. The individual discussed the counseling that she was receiving, and stated that the meditation, deep breathing exercises and other coping mechanisms that she has learned had helped her to deal with stress in a more constructive manner. Tr. at 62. Her intention is to continue with counseling as long as her therapist believes it to be necessary. Tr. at 63. The individual also said that her daughter, who is 18 years old, has moved in with her father and will remain there until she goes off to college in the fall. *Id.* She concluded that, although this proceeding has obviously been the source of a considerable amount of stress, she is excited about her daughter entering a new phase of her life and has a positive, hopeful outlook on life in general. Tr. at 74. The individual’s testimony that she has never used illegal drugs and that she has not misused prescription drugs except during her suicide attempt was supported by the testimony of her former manager, her co-worker, and her sisters. Tr. at 17, 19, 22, 28, 30, 39.

The individual’s therapist also testified. He said that the individual was very amenable to, and compliant with, counseling, and that they meet once per week. Tr. at 85. He anticipated that their sessions would continue for approximately six more months, but he said that he would be willing to continue their sessions for a longer period of time if he deemed it necessary. Tr. at 100, 103. Among the goals of counseling have been addressing the individual’s self-demeaning thoughts, giving her the tools to deal with stress and with strong emotions, and improving her communications skills with members of her family. Tr. at 87-88. The therapist concluded that the individual was doing very well in counseling, that he did not think that she would relapse into the same patterns of thought and behavior that led to her suicide attempt, and that her prognosis was “very favorable.” Tr. at 97, 101.

B. Administrative Judge's Determination

After reviewing the testimony at the hearing and the record as a whole, I find that the individual's misuse of prescription drugs on March 3, 2014, was a single, isolated incident that is unlikely to recur. *See Adjudicative Guidelines, ¶ 26 (a)* (the behavior happened so long ago, 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). There is no evidence that the individual has ever used illegal drugs or misused prescription drugs other than on the date in question, and I found credible the testimony of the individual and her witnesses that she had not engaged in such behavior. I also find it extremely unlikely that the individual is an abuser of prescription drugs, given the fact that she had in her possession a substantial number of expired Hydrocodone pills at the time of her suicide attempt. My finding that the individual's misuse is unlikely to recur is based on the unusual circumstances surrounding that occasion, on the finding of the DOE psychologist that the individual is not suffering from any illness or mental condition that causes, or could cause, a significant defect in her judgement or reliability, on the individual's ongoing therapy, and on the positive prognosis of her therapist. The individual has successfully addressed the DOE's security concerns under criterion (k). For the same reasons, I find that the individual is not an "unlawful user of a controlled substance" or an "addict" as those terms are used in the Bond Amendment.

V. CONCLUSION

For the reasons set forth above, I find that no significant security concerns remain under criterion (k), and that the Bond Amendment is not applicable in this case. Consequently, the individual has demonstrated that granting her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should grant the individual a security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: June 1, 2015