

four hydrocodone tablets that had been prescribed to her father and swallowed them. After obtaining the pills but before swallowing them, she called several people and indicated to them that she was going to commit suicide. At least one of those people called the local police, and the individual was taken first to a local hospital, and then to a local mental health facility. After it was determined that she was not a danger to herself or to others, she was released the next day with instructions to see a local therapist.

Upon learning of this incident, the local security office (LSO) initiated an investigation. As part of this investigation, LSO summoned the individual for an interview with a personnel security specialist in December 2011. After this Personnel Security Interview (PSI) failed to successfully address the LSO's security concerns, the individual was referred to a local psychologist (hereinafter referred to as "the DOE psychologist") for an agency-sponsored evaluation. The LSO reviewed the DOE psychologist's written report, the transcript of the PSI, and the rest of the individual's personnel security file, and determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual 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 a Hearing Officer in order to resolve the substantial doubt concerning her 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 five exhibits into the record of this proceeding. The individual introduced eight exhibits and presented the testimony of five witnesses at the hearing, in addition to testifying herself.

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

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to Title 50 of the United States Code, section 435c (hereinafter referred to as "the Bond Amendment"), and 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.

The Bond Amendment prohibits a federal agency from granting or renewing a security clearance for a person who is an unlawful user of a controlled substance or an addict. Under criterion (k), information is derogatory if it indicates 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. As support for its invocation of both of these provisions, the Letter cites the individual’s statements during her PSI, in which she admitted taking hydrocodone, a controlled substance, that was prescribed to her father, even though she knew her actions to be illegal.

This derogatory information adequately justifies the DOE’s invocation of the Bond Amendment and criterion (k), and raises significant security concerns. Illegal drug usage can raise questions about an individual’s reliability and trustworthiness, both because such usage may impair judgement 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 (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 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. FINDINGS OF FACT AND ANALYSIS

Based on the record in this matter, I find that the individual is not an “addict” or an unlawful user of a controlled substance within the meaning of the Bond Amendment. I also find that the individual has mitigated the DOE’s security concerns under criterion (k). My reasons for these conclusions are set forth below.

The Bond Amendment incorporates by reference the definition of “addict” set forth at 21 U.S.C. § 802. As so defined, “addict” refers to a person “who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.” The individual clearly does not meet this definition. As an initial matter, she is not an habitual user of hydrocodone or any other controlled substance. As I shall discuss in greater detail below, the usage was an isolated incident that is unlikely to be repeated. Furthermore, both of the mental health professionals who have examined the individual opined that she does not suffer from a substance use disorder.

In her report, the DOE psychologist concluded that the individual does not suffer from substance abuse or dependence. DOE Exhibit (DOE Ex.) 4 at 2. She further stated that the individual’s behavior “does not reflect a clinical pathology” and “is unlikely to ever occur again.” *Id.* at 4.³ The individual’s therapist, who is also a licensed substance abuse counselor, testified that, based on her interview with the individual and the results of two diagnostic tests that she administered (the Substance Abuse Subtle Screening Inventory and the Drug Abuse Screening Test), she also concluded that the individual does not suffer from a substance use disorder. Hearing Transcript (Tr.) at 50-51. I therefore find that the individual is not an “addict” as that term is used in the Bond amendment.

³ The DOE psychologist also concluded that the individual does not suffer from any other illness or mental condition that could cause a serious defect in her judgement or reliability. Her ingestion of the four hydrocodone tablets “was an impulsive and manipulative action that had no chance of causing her death,” DOE Ex. 4 at 3, and “appears to have been primarily motivated to make an impact on others rather than a genuine attempt to die.” DOE Ex. 4 at 5. The DOE psychologist agreed with the diagnosis of Adjustment Reaction with Depressed Mood given to the individual by the local mental health facility on the day of her discharge, but added that the emotional instability and poor judgement that she demonstrated in taking the pills were not likely to continue. Consequently, she concluded that this condition was not one that would cause serious defects in the individual’s judgement or reliability in the future. *Id.*

In contrast to the term “addict,” the Bond Amendment does not define “unlawful user of a controlled substance.” However, because the usage was an isolated event that is unlikely to recur, the individual no longer falls within the parameters of any reasonable definition of that term.

The individual indicated at the hearing that, other than the incident at issue here, she has never used illegal drugs or misused prescription drugs. Tr. at 27-28. Her testimony in this regard was supported by that of her current husband, her therapist, a co-worker and two friends. Tr. at 19, 49, 62, 68, 79. She also submitted the results of random drug screenings administered by her employer in March 2010 and May 2011. Both tests were negative for illegal or unprescribed drugs. *See* Individual’s Exhibit D.

My conclusion that the incident is unlikely to recur is based on the unique circumstance that it was a suicide gesture, not a usage for recreational purposes, and that the individual has undergone therapy designed to assist her in handling the stressors that led to the incident in a more constructive manner. At the hearing, the individual testified about the events that led up to her ingestion of the four hydrocodone tablets. She said that her eldest son, a 17 year-old who had been an honor student and an interscholastic athlete, became “argumentative,” and started making really bad choices. Tr. at 29. He began staying out late at night and cutting classes. *Id.* He also moved out of the individual’s residence and moved in with his 19 year-old girlfriend. DOE Ex. 4 at 2. A younger son, a high school freshman, got suspended from school for a week and was thrown off the football team. Tr. at 29. Then, the night before the incident in question, the younger son called his paternal grandmother, who resides in another state, and complained about his situation, including the individual and her rules. Tr. at 30. According to the individual, the grandmother invited the younger son to come live with her, without consulting with the individual. DOE Ex. 4 at 3. During the following afternoon, the individual’s older son drove to the individual’s residence and left with the younger son. The individual assumed that he was taking the younger son to his grandmother’s house. *Id.* At this point, the individual felt that she had lost control and that her sons were making poor choices, and this “terrified” her. Tr. at 30. She telephoned her father, told him that she had injured her back doing yard work, and got the pills from him that she would ingest later that day. Tr. at 32.

It is apparent that the individual’s act was triggered by conflict between herself and her sons, and her need to exercise some level of control in the face of that conflict. The individual and her therapist testified that these were among the issues that the two of them have addressed during their sessions. The individual testified that her therapy has helped her “figure out [that] sometimes you can’t control every situation,” and that sometimes “you have to let it unfold the way it’s intended to unfold and hope for the best.” Tr. at 26. She added that counseling has been “eye-opening,” and has given her “better coping skills,” and that being in control is not as important to her as it once was. Tr. at 38.

The individual's therapist also testified about her counseling sessions with the individual. She stated that her goals going into therapy were to (i) look at how the individual deals with highly emotional issues and to help her develop better skills for managing strong emotions, (ii) help the individual develop better communication skills, particularly with her family members, (iii) examine the individual's relationships with her sons and how they became so emotionally charged, (iv) help the individual learn some of the skills and principles of authoritative parenting, and (v) to help her develop and use better self-care techniques. Tr. at 48. According to the therapist, at this point in the individual's counseling, they have accomplished approximately eighty percent of these goals. Since beginning therapy, the individual has learned

to reflect on her behavior with less defensivenessShe's able to identify ways to cope with strong emotions, and she's utilizing those strategies. She's able to understand and depersonalize her son's behavior, so now it isn't all about her, it's about them being teenagers She's also able to identify better and more diplomatic ways of communicating and how to listen more actively and less defensively.

Tr. at 53. Because of these changes, she testified that it was "pretty unlikely" that the individual would react in the manner that she did if faced with a comparable situation in the future. Tr. at 54.

That the individual's ingestion of hydrocodone was an isolated incident that is unlikely to be repeated also serves as sufficient mitigation for the DOE's security concerns under criterion (k). *See Adjudicative Guideline H* (usage that "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 judgement" is a mitigating factor).

V. CONCLUSION

For the reasons set forth above, I find that the individual has successfully addressed the DOE's security concerns under criterion (k). I therefore conclude that restoring her 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 be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals
Date: July 17, 2012