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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: June 4, 2015)
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Case No.: PSH-15-0043

Issued: September 15, 2015

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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, Subpart A, 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 Individual is a DOE contractor employee for whom her employer has requested a security clearance. *See* Transcript of Hearing, Case No. PSH-15-0043 (hereinafter cited as “Tr.”) at 46. In applying for a clearance, the Individual submitted a Questionnaire for National Security Positions in which she provided information regarding her treatment for mental health issues. Exhibit (Ex.) 5 at 7. Subsequently, on January 7, 2015, the LSO conducted a personnel security interview with the Individual. Ex. 5. A DOE consulting psychologist (DOE Psychologist) evaluated the Individual on February 27, 2015 and issued a report. *See* Ex. 4 at 1.

After receiving the report, the LSO informed the Individual in an April 2015 letter (Notification Letter) that reliable information in its possession cast into doubt her eligibility for an access authorization. Exhibit (Ex.) 1. The Notification Letter also informed the Individual that she was

¹ An 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 an access authorization or a security clearance.

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

entitled to request a hearing before an administrative judge. *Id.* The Individual requested a hearing and the LSO forwarded the request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on June 4, 2015.

At the hearing, the LSO presented the testimony of the DOE Psychologist. *See Tr.* The Individual, represented by counsel, presented her own testimony as well as the testimony of two witnesses: her co-worker and a psychiatrist (Consulting Psychiatrist). *See id.* The LSO submitted five exhibits, marked as Exhibits 1 through 5, while the Individual submitted six exhibits, marked as Exhibits A through F.

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 standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the interest of the national security” standard for granting security clearances indicates “that security-clearance determinations should err, if they must, on the side of denials”); *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 an 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 evidence 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.

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable” 10 C.F.R. § 710.7(a). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a).

III. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS

The Notification Letter informed the Individual that the LSO had received information that raised security concerns under 10 C.F.R. § 710.8(h) (Criterion H). Criterion H refers to information indicating that the Individual has: “[a]n illness or mental condition of a nature which, 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). Specifically, the Notification Letter alleges that the DOE Psychologist concluded in his report that the Individual meets the criteria for a diagnosis of Bipolar Disorder II and that Bipolar Disorder II is a mental condition, which causes, or may cause, significant defects in judgment or reliability.³ Ex. 1 at 3.

The DOE Psychologist’s Report adequately justifies the DOE’s invocation of Criterion H, and raises significant security concerns. Certain emotional, mental and personality conditions can impair judgment, reliability or trustworthiness and thus can raise a security concern. *See* Adjudicative Guideline at I.

IV. FINDINGS OF FACT AND ANALYSIS

The Individual’s diagnosis of Bipolar Disorder II is not in dispute. Ex. A at 3; Tr. at 49. The DOE Psychologist, in his report, described the Individual’s disorder as a “mild” form of Bipolar Disorder II. Ex. 4 at 5. The Consulting Psychiatrist who testified on her behalf agrees with the diagnosis.⁴ Ex. A at 8. The Individual accepts the diagnosis as well. Tr. at 58.

According to the testimony of the Consulting Psychiatrist, Bipolar Disorder II often manifests itself mainly through episodes of depression. Tr. at 23. Episodes of hypomania, in which an individual feels unusually energetic, tend to occur less frequently. *Id.* The Individual has periodically gone through depressive episodes, including in 2006, 2008, 2009, 2012 and 2013. Ex. A at 1-3; Ex. 4 at 3-4. She has experienced at least two hypomanic episodes, the most recent in 2011. Tr. at 24; Ex. 4 at 4; Ex. A at 2-3. She has had no episodes of either type since her last depressive episode in January 2013, more than two years ago. Ex. 4 at 4; Ex. A at 3; Tr. at 24, 57. Both the DOE Psychologist and the Consulting Psychiatrist determined that the disorder is currently in remission. Ex. 4 at 5; Ex. A at 8; Tr. at 24, 71.

The Individual has received mental health services, as well as psychiatric medication, intermittently, since 2008. Ex. A at 2-3; Ex. 4 at 3-4. Around January 2012, she consulted with a therapist and remains under that therapist’s care. Ex. A at 3. In April 2013, she first saw the Treating Psychiatrist who diagnosed her with Bipolar Disorder II. Ex. A at 3; Ex. 4 at 4. She currently sees the therapist about twice a month and the Treating Psychiatrist every 6 to 8 weeks. Ex. A. at 3. The Treating Psychiatrist initially prescribed medication to the Individual for her Bipolar Disorder. *Id.* When the Individual became pregnant, she discontinued the medication after consulting with the Treating Psychiatrist, due to her pregnancy and the potential risks to her

³ The Notification Letter states that the diagnostic criteria for Bipolar Disorder II are set forth in the *Diagnostic Statistical Manual of Mental Disorders* by the American Psychiatric Association, 5th Edition (DSM-5). Ex. 1 at 3.

⁴ The Consulting Psychiatrist is not the same psychiatrist who treats the individual (Treating Psychiatrist). The Consulting Psychiatrist prepared a report and testified on the Individual’s condition after obtaining the DOE Psychologist’s report, gathering information from the Treating Psychiatrist and performing a clinical evaluation of the Individual. Tr. at 19-20; Ex. A at 1.

then unborn child. Ex. A at 7-8; Tr. at 27. The Individual, in consultation with her therapist and the Treating Psychiatrist, plans to restart medication if depression returns. Ex. A at 8; Tr. at 27-28.

The Consulting Psychiatrist believes that the Individual has a “favorable prognosis.” Tr. at 25. He gave several reasons for this. First, he considers it a positive sign that she has not become symptomatic again even though the Individual has discontinued her medication and has experienced the stresses associated with becoming a parent. Tr. at 26-28; Ex. A at 8. He also stated that information he obtained from the therapist indicates the Individual has become “much more stable over time.” Tr. at 29.

In addition, the Consulting Psychiatrist gave his opinion that if symptoms were to reemerge, the issue would “be on the agenda right away, and she would have a system in place for dealing with it.” Tr. 38-39. The Consulting Psychiatrist testified that the Individual has good relationships with her therapist and the Treating Psychiatrist and that she has a stable, supportive marriage. Tr. at 25-26; Ex. A at 8. Her colleague identified himself as a part of the Individual’s support group. Tr. at 15. He testified that he likely “would be able to tell” if her condition deteriorated. *Id.* The Consulting Psychiatrist believes that the Individual has a better support system in place now than she did during episodes of depression earlier in her life. Tr. at 40-41.

The Consulting Psychiatrist further described the Individual as “somebody who has taken a proactive approach” to her illness. Tr. at 30. He noted that the Individual, during a busy period in her life, needed to take time off from therapy. Tr. at 29. However, despite not experiencing any symptoms, she returned to therapy as she adjusted to a new marriage and before having a child to help her prepare for the changes in her life. Tr. at 29-30. He stated: “You don’t see that in a lot of people.” Tr. at 43. The Individual’s testimony reinforces the Consulting Psychiatrist’s conclusions. She testified that, since receiving the diagnosis of Bipolar Disorder II in 2013, she has become better at managing her condition. Tr. at 58, 60-61. She stated that she is aware of stresses in her life that could trigger an episode and knows the symptoms to look out for so she can stay healthy. Tr. at 64-65. Going forward, she testified, she will continue treatment and will rely on her support system. Tr. at 56.

Taking into account the above information, the Consulting Psychiatrist concluded that the Individual does not have an illness or mental condition that causes, or may cause, a significant defect in judgment or reliability. Ex. A at 9; Tr. at 24. After hearing the testimony of the Individual and her witnesses, the DOE Psychologist reached a similar conclusion. He testified that although a possibility exists that the Individual’s disorder could, in the future, lead to defects in her judgment and reliability, that probability is “very low.” Tr. at 73.⁵

Given the evidence presented in this case, I find that the Individual has resolved the Criterion H security concerns raised by her diagnosis with Bipolar Disorder II. The Adjudicative Guidelines

⁵ It is also worth noting how the DOE Psychologist, in his report, responded to the question of whether the Individual has an illness or mental condition that causes, or may cause, a significant defect in judgment or reliability. Answering that question, the DOE Psychologist placed the word “yes” in quotation marks. *See* Ex. 4 at 5. In his testimony, the DOE Psychologist explained that he used quotation marks around the word “yes” because the Individual is currently asymptomatic and due to the low probability that her condition would cause a significant defect in judgment or reliability in the future. *See* Tr. at 74-75.

provide that the security risks associated with psychological conditions may be mitigated when an individual has a condition that is amenable to treatment and the individual has received a favorable prognosis from a duly qualified mental health professional. *See* Adjudicative Guideline I at ¶ 29. Evidence of compliance with a treatment plan and of remission may also mitigate security concerns. *See id.* I find that the Individual has demonstrated compliance with her treatment plan and is committed to continuing her treatment plan. She has received a favorable prognosis from both experts who testified that her condition is in remission and that there is a low risk of a relapse that could cause a significant defect in her judgment and reliability. In the event that the Individual's symptoms reemerge, I am satisfied that the Individual and her support group, which includes her therapist and Treating Psychiatrist, would ensure that any such change in her condition would be promptly addressed and thus not affect her judgment and reliability.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion H. However, after considering all the evidence, I find that Individual has sufficiently resolved the Criterion H concerns. Accordingly, the Individual has demonstrated that granting her a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual should be granted a security clearance. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: September 15, 2015