*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	February 2, 2018	)	Case No.: PSH-18-0014
		)	
		)	

Issued: May 15, 2018

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXX XXXXXX (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 granted.

I. BACKGROUND

A DOE Psychologist (the DOE Psychologist) conducted a forensic psychological evaluation of the Individual on October 13, 2017, and on October 25, 2017, issued a report in which she concluded that the Individual meets the criteria set forth in *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5),* for Bipolar I Disorder. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21.

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 February 5, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his father, a Psychologist employed by the

[1] Under the regulations, "Access authorization" means 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.

Individual's employer's Occupational Medicine Department (the OMD Psychologist), and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0014 (hereinafter cited as "Tr."). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as "Ex."). The Individual submitted three exhibits, marked as Exhibits A though C.

II. 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 his eligibility for a security clearance. That information pertains to Guideline I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Under Guideline I, Psychological Conditions, the LSO alleges that the DOE Psychologist has concluded that the Individual has Bipolar Disorder I. Statement of Security Concerns. The Guidelines provide that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Guideline I at ¶ 28. Guideline I further provides that "an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness" may raise a security concern and be disqualifying. Guideline I at ¶ 28(b). Accordingly, these allegations adequately justify the LSO's invocation of Guideline I.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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 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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In July 2016, the Individual began experiencing a manic episode. Ex. 7 at 3. On July 19, 2016, the Individual drove a motor vehicle through a security gate at a guarded DOE facility. Ex. 6 at 1. Security officers from the facility's protective force apprehended the Individual and detained him. Ex. 6 at 1. The security officers reported that the Individual was exhibiting bizarre behaviors and speaking incoherently. Ex. 6 at 1-2. The Individual was then transported to a local hospital. Ex. 6 at 3. At the local hospital, the Individual continued to exhibit bizarre behaviors, expressed bizarre beliefs, experienced hallucinations, and refused to eat. Ex. 7 at 4; Ex. 9 at 33-34. The attending psychiatrist at the local hospital diagnosed the Individual with Bipolar Disorder, and prescribed Depakote, a medication used to treat mania resulting from Bipolar Disorder. Ex. 7 at 4. The Individual was released from the local hospital on July 24, 2016. Ex. 7 at 4.

On August 11, 2017, the LSO conducted a Personnel Security Interview (PSI) of the Individual. During the PSI, the Individual discussed his July 2016 manic episode and the events preceding it. Ex. 9 at 11-47. The Individual also discussed a previous manic episode which occurred in June 2014. Ex. 9 at 60-99. That manic episode was initially diagnosed as insomnia and eventually resulted in the Individual's hospitalization. Ex. 9 at 69, 72. During this previous manic episode, the Individual experienced delusions and hallucinations, as well as rambling thoughts and speech. Ex. 9 at 80-81. The Individual also described three occasions in 2012 and 2014 which may have been "manic behavior" or warning signs of his illness. Ex. 9 at 130-133.

On October 13, 2017, the DOE Psychologist conducted a forensic psychological evaluation of the Individual. Ex. 7 at 1. In addition to interviewing the Individual, the DOE Psychologist reviewed the Individual's Personnel Security File, and administered the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF) to him. Ex. 7 at 2. On October 25, 2017, the DOE Psychologist issued a report stating her conclusions. Ex. 7 at 7. The DOE Psychologist reported that the Individual had been diagnosed with Bipolar I Disorder, Severe, Most Recent Episode Manic, With Psychotic Features, in 2014. Ex. 7 at 2. She noted that the Individual had reported two experiences, in 2012 and 2014, which she believed to be "prodromes," or early signs or symptoms of Bipolar Disorder. Ex. 7 at 2. The second of the two prodromes occurred approximately a month prior to the Individual's first full-blown manic episode. Ex. 7 at 2. The DOE Psychologist further reported that the Individual's first manic episode was first diagnosed as insomnia.

Another doctor then diagnosed the Individual with psychosis and hospitalized him at a local military facility. Ex. 7 at 3. The medical staff at the local military facility diagnosed the Individual with Bipolar Disorder I with Psychotic Features, and arranged for him to be sent to a major military medical facility, where the medical staff concluded that he had Bipolar Disorder I, Most Recent Episode Manic, Severe, With Psychotic Features. Ex. 7 at 3. The Individual informed the DOE Psychologist that he began exhibiting symptoms of a manic episode in early July of 2016, when he confronted a stranger in a parking lot and engaged in a yelling match with that person. Ex. 7 at 4. He subsequently experienced difficulties in concentration and experienced an "urge to bless everybody." Ex. 7 at 4. The DOE Psychologist provided the following account of the Individual's July 19, 2016, manic episode:

> The Individual ran through a vehicle access point . . . or security gate, believing that he would be killed, as he thought he was destined to be. He did not want to die, but believed at that point that he was "meant to die." Security officers followed him into a parking lot, detained him and searched his vehicle. They described [the Individual's] bizarre behaviors: he got out of his car holding his badge, a prayer book and a rosary, was unresponsive to their questions, and was "shaking and sweating." He seemed to be mumbling prayers, at one point simply started walking away from them, and told them he was going to heaven that day and that he "does God's work." Due to his "suspicious behavior and nearly incoherent state," officers handcuffed [him] and called in the [local] police. When they arrived [the Individual] "appeared to lose consciousness and his body went completely limp." Paramedics arrived and [he] was transported by ambulance to the [local hospital]. At the [hospital], he was offered food but refused to eat anything because he thought it was poisoned. He heard voices in the hallway of people he knew (who were not there), and thought one of the police officers wanted to hurt him. [He] was given a sedating injection and transported to the psychiatric ward . . . He was hospitalized from 07/19-07/24/2016 during which time his medication was changed to Depakote (used to treat manic episodes in bipolar disorders).

Ex. 7 at 4. The DOE Psychologist further noted that the Individual had been receiving treatment for his Bipolar Disorder since his release from the hospital in July 2016, and was currently prescribed Olanzapine and Depakote which have been effective in controlling his symptoms. Ex. 7 at 5. The Individual expressed his intention to continue his treatment. Ex. 7 at 5. The DOE Psychologist further noted that the Individual was being monitored for fitness for duty by the OMD Psychologist, who informed the DOE Psychologist that the Individual's "prognosis is good as long as he complies with medication and follow-up evaluation . . . to date he has followed all prescribed and recommended treatment. There is no potential for subject's condition or treatment to impact on his ability to properly safeguard classified information as long as subject is stable on his medications." Ex. 7 at 5.

The DOE Psychologist further reported that the Individual displayed insight into his illness. Ex. 7 at 5. The Individual reported that the OMD Psychologist had encouraged him to eat healthy and to get exercise, helped him recognize early signs or symptoms of his disorder, and provided him with clear directions of specific steps to take if he observes these early signs or symptoms. Ex. 7 at 5. The DOE Psychologist noted that the MMPI-2-RF she had administered to him supported her clinical impression that the Individual was not currently exhibiting signs of psychosis. Ex. 7 at 6. The DOE Psychologist stated that the Individual's "diagnosis can cause significant impairment to his judgment, reliability and emotional stability, and has done so during two distinct manic episodes in 2014 and 2016." Ex. 7 at 6. Nevertheless, the DOE Psychologist concluded:

> At the time of this evaluation, [the Individual] had not had a psychotic/manic episode in 15 months, which is an adequate period of time to regain confidence in his judgment, reliability, stability and trustworthiness. It appears that his medication and out-patient care are effectively treating his mania and, as long as he remains on his medications, he is apt to be stable. I was impressed with [the Individual's] motivation to remain on his medications: he found the manic and psychotic experiences "horrifying and frightening" . . . Untreated, bipolar illness typically worsens with age, but treating the mania in the early weeks of a break, as it was for [the Individual], greatly improves the prognosis. The

> symptoms may reoccur and override the medication and so [the Individual] needs to respect the prodromal signs that a breakthrough may be imminent. [The Individual] now has a plan in place: first and foremost to remain on his medications; his family and a couple of close friends know the "signs" and he has requested that they intervene if they see them developing; he is monitored by a trusted psychologist, [the OMD Psychologist], on a regular basis; and he is willing to contact his treating provider(s) to request help. No one can assure that [the Individual] will not have further episodes, but significant confidence in his stability is evidenced by the extended period of time since his last manic episode. All of the mental health professionals [the Individual] has seen agree that his prognosis is good, provided he remains on his medication. [The Individual] is in agreement with that and has been faithful to following treatment recommendations. He should continue to remain in frequent contact with his prescribing provider [and the OMD Psychologist]. At this time, [his] diagnosis is Bipolar I Disorder in Full Remission . . . most recent episode manic.

Ex. 7 at 6-7.

At the hearing, the Individual acknowledged that he has a Bipolar Disorder. The Individual presented evidence showing that he understands his disorder; is complying with his treatment; intends to always comply with his treatment; and is receiving the appropriate treatment for his disorder. The individual also presented evidence showing that the treatment has been effective, and that he has a strong support network in place to monitor him in case he starts to relapse.

The Individual's father testified that he and the Individual are close, and that they have a close-knit family. Tr. at 15. He testified that the Individual visits his home frequently, almost every weekend and often during the week. Tr. at 15. The father testified that he is aware of his son's Bipolar Disorder, and has been ever since his son was first diagnosed. Tr. at 16-17. The father testified that he worked in inpatient psychiatric facilities, as a mental health specialist, for 18 years, and was very familiar with the psychiatric issues facing his son. Tr. at 18, 27. The father testified that since his son's last episode, his son has been seeing a clinical nurse on a consistent basis, having regular visits with a psychologist, and getting his lab work done, and that he is being very consistent about taking his medication. Tr. at 18-21. The father testified that he is always monitoring his son for signs of relapse. Tr. at 20. The father testified that his son "is back to normal." Tr. at 21. The father attributed his son's previous relapse to his son's not having received the appropriate medication. Tr. at 21. He testified that it has been about two years since his son last had a manic episode. Tr. at 22. The father testified that if he observed any of the warning signs of another episode, he would have his son evaluated immediately. Tr. at 24. He stated that both he and his wife keep the phone number of his son's psychiatric clinic with them, in case their son needs help. Tr. at 24-25. The father testified that the Individual is close to his six siblings and that they are aware of their brother's disorder. Tr. at 26. The son's support system extends past his immediate family; he has friends and an extensive extended family. Tr. at 27. The father testified that his son understands the severity of his disorder and the importance of taking his medication and other steps to manage it. Tr. at 28.

The Individual testified at the hearing, stating that after his second episode, he changed medical practices and began seeing a psychiatrist, at the recommendation of the OMD Psychologist. Tr. at 41-42. The psychiatrist left the area, and now the Individual's medications are being monitored by

a nurse practitioner.[2] Tr. at 41-42, 45. The Individual is also being monitored by the OMD Psychologist. Tr. at 42, 45. The Individual also has regular bloodwork. Tr. at 46. The Individual testified that he conducts periodic self-assessments. Tr. at 47. The Individual testified that the OMD Psychologist taught him to do the self-assessments, Tr. at 49, and that he monitors himself for signs of another manic episode, which would include "paranoia, sleeplessness, restlessness, sweatiness, just fear of people, my peers, you know, feeling like I'm -- feeling like I'm a victim, not being able to concentrate, things like that." Tr. at 47. He stated that he has a plan in order in case he detects any signs of relapse, and that he would immediately seek medical attention at an emergency room. Tr. at 47. His family understands that if he fails to do so by his own volition, they should call the police and have him transported to the hospital. Tr. at 47. The Individual now knows that as soon as he notices any of the warning signs, he needs to contact his family and go directly to a hospital. Tr. at 50-51.

The Individual stated that he sees his parents at least a few times a week, Tr. at 47-48, and that they understand his condition and know what warning signs they need to look out for. Tr. at 52. His manager and his mentor at work also know about his Bipolar Disorder. Tr. at 53-54. The Individual testified that he has not had any symptoms since July 2016, Tr. at 54, and that he has complied with all treatment recommendations since his last hospitalization in 2016. Tr. at 57. The Individual understands that he will need to take medication for the rest of his life and he is comfortable with that fact. Tr. at 61. He knows that he would have another relapse if he were to discontinue his medication. Tr. at 62.

The OMD Psychologist testified at the hearing that she serves as a doctorate level clinical psychologist for the OMD and for the Human Reliability Program (HRP). Tr. at 67. She testified that she conducted a fitness for duty evaluation of the Individual before he was allowed to return to work after the July 2016 incident. Tr. at 69. In conducting that fitness for duty evaluation, she obtained his medical records, as well as information from his psychologists and psychiatrists and his managers and the protective force. Tr. at 69. She also conducted an interview of the Individual. Tr. at 69. After conducting the fitness for duty evaluation, she continued to monitor the Individual. Tr. at 69. She found the Individual fit for duty, with restrictions, in August 2016. Tr. at 70. The OMD Psychologist testified that she had been monitoring the individual for almost two years, Tr. at 70, and at the time of the hearing, the Individual was under no fitness for duty restrictions, other than being monitored. Tr. at 72-73. She testified that the Individual no longer needed to be monitored. Tr. at 73. She testified that there are other employees at the facility who have Bipolar Disorder who remain stable and appropriately medicated, and are therefore fit for duty. Tr. at 73. She testified that the Individual is aware of his warning signs and what he needs to do if he observes them, and that he has excellent family support, support from his church community, and support from the OMD. Tr. at 73. She further noted that he was seeing an outpatient provider for medication management. Tr. at 74. She noted that his manager is "a very, very awesome boss who is involved and also is very emotionally supportive of him in the workplace and understands, you know, the red flags, as well." Tr. at 74. The OMD Psychologist concurred with the Bipolar Disorder diagnosis. Tr. at 75. She believes that the Individual is in full remission, and has been symptom-free for 21 months. Tr. at 75. The OMD Psychologist testified that the Individual's previous relapse occurred because he was not receiving the appropriate treatment and monitoring. Tr. at 75-

[2] The Individual submitted a letter prepared by the Nurse Practitioner, who indicated that the Individual is complying with his treatment. Ex. C.

76. She stated her belief that he was now getting the appropriate treatment and monitoring. Tr. at 76, 84. She testified that the Individual's prognosis is "quite good." Tr. at 77. She further stated, "out of any bipolar client I've ever seen, I think [the Individual's] got a really excellent prognosis." Tr. at 77. She further testified that the Individual has "really good insight" and that 'he's a very responsible, smart, young man who is committed to managing his disease." Tr. at 79. The OMD Psychologist also testified that if the Individual were to have a relapse, his judgment could be severely impaired. Tr. at 80. However, the OMD Psychologist further testified that there is a good chance that the Individual's warning signs will be detected before he has a full blown episode. Tr. at 81. The OMD Psychologist noted that other individuals with Bipolar Disorder maintain security clearances and HRP certification at her facility. Tr. at 83. Those Individuals have been stable psychologically for a long time. Tr. at 83. She stated that she considers 21 months to be a long period of psychological stability. Tr. at 83-84.

The DOE Psychologist observed the testimony of the other witnesses before she testified. She testified that she had diagnosed the Individual with "Bipolar I disorder, most recent episode manic, in full remission." Tr. at 95. The DOE Psychologist testified that the Individual's Bipolar Disorder has impaired his judgment, reliability, stability, and trustworthiness, but only when he was experiencing manic episodes.[3] Tr. at 96. She stated that the Individual's judgment, reliability, stability, and trustworthiness are not impaired when his disease is under control. Tr. at 96. The DOE Psychologist further testified that the Individual's lack of residual symptoms (asymptomatic recovery) is "a positive prognostic sign." Tr. at 96-97. The DOE Psychologist testified that she had no concerns about the Individual's future compliance with his medication regime. Tr. at 97. The DOE Psychologist also cited the Individual's "good coping mechanisms," "self-care," continued therapy, and social support as positive factors for his prognosis. Tr. at 97-98. She testified that the Individual is now on both anti-psychotic and mood stabilizing medication, "which is what he needed all along." Tr. at 98. She opined that the Individual was not appropriately medicated in the past, which resulted in his relapse. Tr. at 99-100.

The DOE Psychologist noted that the OMD Psychologist had provided the Individual with education about his disorder including the warning signs and the importance of having a very specific plan for responding to those warning signs. Tr. at 100. She further testified that, while no one can be sure that an individual with Bipolar Disorder will not relapse, the Individual is neither a high-frequency nor a high-risk patient. Tr. at 100-101. The DOE Psychologist opined that the Individual is a "low-risk" patient. Tr. at 107. She noted that the Individual has all four of the most significant factors for a positive prognosis, specifically: "being in treatment, being compliant with his medication and having social support -- in fact, his is quite broad, family, friends and -- and work -- and then having the asymptomatic recovery." Tr. at 105. The DOE Psychologist testified that the Individual's "prognosis is very good given all of those factors." Tr. at 101. She further opined:

> The other thing that's been found in the research is that when people have received the cognitive behavioral therapy or the educational therapy and the correct medications, if they do start to have an episode, it is briefer, hospitalization is much less frequently required, and the symptoms are much less severe. When I say much, I mean statistically significantly less severe.

[3] The DOE Psychologist noted that the Individual has no history of depressive episodes. Tr. at 96.

Tr. at 101. The DOE Psychologist noted that the only negative prognostic factor for the Individual is the fact that he has had two episodes, one of which may well have resulted from inadequate treatment. Tr. at 105-106. Moreover, the DOE Psychologist further opined that if the Individual were to begin relapsing, it would be much less likely to "develop to the degree that the last one did," because of his medications and monitoring system. Tr. at 107. The DOE Psychologist noted that the Individual found his manic episodes to be "horrifying" and "terrifying," which motivates him to stay on his medications. Tr. at 108.

V. ANALYSIS

The record clearly shows that the Individual has Bipolar Disorder. The Individual's Bipolar Disorder, when symptomatic, has caused severe impairment of his judgment, reliability, and trustworthiness. However, the Individual's Bipolar Disorder has responded to treatment, and he currently does not exhibit any defects or impairment of his judgment, reliability, and trustworthiness. Accordingly, the only issue before me is whether the risk of relapse, and the potential consequences of a relapse, present an unacceptable risk to the national security and the common defense. While the worst case scenario, *i.e.* the Individual experiencing another full-blown manic episode, would present a danger to the national security and the common defense, the testimony of two psychologists, both of whom work as contractors to the DOE, and who both evaluate individuals for suitability to access to nuclear information and material, indicates that this risk is relatively low.

Guideline I identifies five conditions that can mitigate security concerns arising from psychological conditions, three of which apply to the present case. Section 29(a) provides that mitigation might result when "the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan." Section 29(b) provides that mitigation might result when "the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional." Section 29(c) provides that mitigation might result when a "recent opinion [is rendered] by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation."

In the present case, the Individual has clearly demonstrated ongoing and consistent compliance with his treatment plan, which has resulted in a period of 21 months without further symptoms. Two DOE contractor psychologists have found that the Individual has been receiving treatment for his condition which is amenable to treatment, that his condition is under control and in remission, that his prognosis is favorable, and that there is a low probability of recurrence.

Accordingly, I find that concerns raised under Guideline I by the Individual's Bipolar Disorder have been sufficiently resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline I. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the concerns raised under Guideline I. Accordingly, the Individual has demonstrated that granting his 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 granted. The National Nuclear Security Administration may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals