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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: March 5, 2018 ) Case No.: PSH-18-0024  
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Issued: May 24, 2018

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

**I. BACKGROUND**

A DOE Psychologist (the Psychologist) conducted a forensic psychological evaluation of the Individual on December 11, 2017. On December 12, 2017, he issued a report in which he 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, with psychotic features. 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 mother, his twin sister, his fiancé, and the DOE Psychologist. See Transcript of Hearing, Case No. PSH-18-0024 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted two exhibits, marked as Exhibits A and B.

<sup>1</sup> 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.

## **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 Psychologist has concluded that the Individual has Bipolar Disorder I, with psychotic features. 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**

The Individual is an applicant for a DOE security clearance. During his background investigation, the Individual reported that he had been treated for a mood disorder, depression, and anxiety, and that he was currently taking medications for these conditions. Ex. 5 at 2. At the LSO's request, the Psychologist conducted a three-and-one-quarter-hour forensic psychological interview of the Individual on December 11, 2017. Ex. 6 at 1. The Psychologist also administered two standardized psychological tests to the Individual: the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF), and the Rorschach test. Ex. 6 at 1. The Psychologist also reviewed the Individual's personnel security file. Ex. 6 at 2. On December 12, 2017, the Psychologist issued a report in which he 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, with psychotic features. In this report, the Psychologist recounts the Individual's history of domestic discord which resulted in intervention by law enforcement on at least seven occasions between 2009 and 2014. Ex. 6 at 2-3. This domestic discord culminated with the Individual taking himself to an emergency room in order to prevent himself from hurting his former domestic partner or himself. Ex. 6 at 3. The Individual was taken into police custody at the emergency room after threatening to brutally harm his former domestic partner and to take his own life. Ex. 6 at 3.

When the Individual was released from jail, he returned to the emergency room and was hospitalized for three days and diagnosed with "major depression and anxiety. Ex. 6 at 3. After receiving treatment from a number of mental health care providers with disappointing results, he was referred to his current physician (the Doctor) in 2013. The Doctor prescribed him Depakote, which has been effective. Ex. 6 at 4. The Individual reported that he has not had any thoughts of homicide or suicide since 2013. Ex. 6 at 5. The Psychologist, however, opined, "While he has reportedly not been severely depressed or symptomatic over the past four years, he remains vulnerable to these tendencies impairing his judgment, stability, reliability, and possibly his trustworthiness, although there was no direct evidence of the latter." Ex. 6 at 6. The Psychologist further opined:

[The Individual] has a mental condition involving Mania and Major Depressive Episodes. His symptoms have led to his psychiatric hospitalization and have included psychotic aggressive affect, hallucinations, and frenetically driven thinking. These fulfill the criteria for Bipolar I Disorder . . . with psychotic features, currently in remission since 2013/14 due to his taking Depakote. His positive response to the mood stabilizer supports this diagnosis as does his negative response to antidepressants even though he was depressed. Bipolar I Disorder is a mental condition which can impair his judgment, stability, and reliability.

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While this mental condition is currently in remission, he remains vulnerable to relapses into an agitated depression with weakened reality adherence or immobilizing depression. Bipolar I Disorder is probably not curable but can usually be controlled with medication. Stress, however, and the stimulation of strong affect can override the medication and cause a relapse. If he continues to take his medication and there are no major upsets or losses in his life, then his prognosis

should be moderately good for avoiding mania and debilitating depressive crises in the future.

Ex. 6 at 6-7.

The Individual has submitted Exhibit A, a letter dated May 9, 2018, authored by the Doctor concerning his treatment of the Individual. In this letter, the Doctor states, in pertinent part:

I have seen [the Individual] a total of six times since his initial visit with me on 4.23.13. Other dates include 8.9.13, 3.10.15, 7.14.15, 12.15.17 and 3.13.18. He had come to me after growing increasingly discouraged with follow up that [sic] the [ ] Mental Health Center where he had had three psychiatric hospitalizations. The last in early 2013 after a "bad break-up". This was characterized by threats to self and others. I have been working with a diagnosis of Bipolar II disorder and issues of anger dyscontrol and have treated him with antidepressant medication and mood stabilizers. His clinical course under my treatment has been unremarkable, save several lapses in making his follow up appointments, eg, August 2013 to March 2015 and July 2015 to December 2017 there have been no difficulties in his treatment. By all measures he appears to be a dedicated father, partner and worker. I have no way of predicting future acting up or violence.

Ex. A. The Individual also submitted some of the medical records prepared by the Doctor in the course of treating the Individual's Bipolar Disorder as Exhibit B.

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; 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 mother testified on his behalf at the hearing. She understands that the Individual is bipolar. Tr. at 22. She testified that she had sought help for the Individual when she became concerned about his mental health. Tr. at 18. She testified that the Individual has made a lot of progress, noting that he has a fiancé and three daughters, who he is very involved with. Tr. at 19. The Individual lives less than a minute away from her and sees her frequently. Tr. at 19. She stated that she believed that the Individual was not diagnosed appropriately at first.<sup>2</sup> Tr. at 22. She also stated that she did not believe that the Individual received the appropriate medication at first. Tr. at 39. She testified that the Individual responded well, once he began Depakote, and that he has been stable since 2013. Tr. at 22, 26, 39. She testified that she had been educated about the warning signs of depression, mania, and psychosis, Tr. at 26-27, and that she would urge her son to see the Doctor if she observed any warning signs. Tr. at 27. She further stated that, if she felt it was urgent, she would take the Individual to the emergency room. Tr. at 27. She testified that she thinks her son would be able to identify any warning signs and that he would then take appropriate action. Tr. at 28, 35-36. The Individual's mother testified that the Individual had recognized that

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<sup>2</sup> She testified that the Individual was previously being seen by "a rotation of residents." Tr. at 24. She felt that the Individual needed to establish a relationship with one physician who would provide more consistent care, so he began seeing the Doctor in 2013. Tr. at 24-25.

he needed help and sought that help. Tr. at 29. She further testified that the Individual's family provides him with a "very strong support system." Tr. at 32-33, 36. She noted that he has her, his two siblings, his fiancé, and "a huge extended family" for support. Tr. at 39-40. She also testified that the Individual's siblings are "very close" to him and are aware of his bipolar disorder. Tr. at 36.

The Individual's twin sister testified on his behalf at the hearing, Tr. at 46, stating that she and the Individual are "extremely close." Tr. at 46. She testified that she sees him several times a week, and that they are constantly texting. Tr. at 54. She noted that the Individual is "a great father." Tr. at 54. She testified that her brother is now even-tempered and patient, exercises good judgment, and is "always pretty happy." Tr. at 54-57, 65. She believes that she knows him so well that she would quickly realize if there were to be anything wrong with him, Tr. at 60, and she stated that she would take him to the hospital, if necessary. Tr. at 61. She asserted that, if she noticed any signs of relapse, she would respond by getting her family involved. Tr. at 65. She testified that her brother has never complained about side-effects from his medication. Tr. at 65.

The Individual's fiancé testified on his behalf, stating that she lives with the Individual and has known him for about eight years. Tr. at 71. The fiancé testified that the Individual is an excellent father and a dedicated family man. Tr. at 75-76. She further testified that he exercises good judgment, trustworthiness, and reliability, and that he is level-headed, easy going, and happy. Tr. at 86. She testified that she is aware of the Individual's past mental health issues and of his Bipolar Disorder diagnosis. Tr. at 78. She stated that she is also aware that the Individual takes Depakote, that he is compliant with his treatment, and that he has never reported any problems with side effects from his medication to her. Tr. at 78, 86. She testified that she sees him take his Depakote each morning, Tr. at 86-87, and that if he ever began to exhibit excessive anger, unwillingness to take his medicine, or any other symptoms, she would contact his support system and the Doctor. Tr. at 82. She testified that his life is centered around his family and extended family, and that he has a lot of support from his family. Tr. at 103.

The Individual testified at the hearing that he recognizes that he has a disease, Bipolar Disorder, that he will always have it, and that he cannot take it lightly.<sup>3</sup> Tr. at 118, 120. He testified that he had been hospitalized for his disorder in 2009, and has been receiving treatment since then. Tr. at 98-99. He stated that he has been seeing the Doctor for several years now, Tr. at 99-100, and that he has been taking Depakote since 2011. Tr. at 100. He testified that Depakote does not have any side effects for him.<sup>4</sup> Tr. at 100-101, 131. He testified that he takes his medication as prescribed, Tr. at 101, 105, and that when he has forgotten to take his Depakote, he noticed mild symptoms. Tr. at 128. He stated that he sees the Doctor every six months. Tr. at 101. He stated that he has a number of family members who he can talk to about his disorder, and that he has a broad range of family and friends that he can rely on. Tr. at 104. He further stated his belief that he would recognize when he needed help, and would be willing to ask for help, if necessary. Tr. at 105. He testified that if he needed help he would contact his sister or mother, and if they were not available,

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<sup>3</sup> The Individual subsequently testified that he hoped that someday he might be able to go without medication, hoping that he might "outgrow" the disease or that researchers might find a cure. Tr. at 132. He acknowledged, however, that his is currently dependent on his medication. Tr. at 132.

<sup>4</sup> Initially, Depakote kept him up at night when he took his pills in the evening, however, this side effect has been avoided by taking his pills in the morning, as advised by the Doctor.

he would take himself to the hospital. Tr. at 105. He asserts that, since his hospitalization, he has not experienced any thoughts of harming himself or others, Tr. at 105-106, although the Individual subsequently acknowledged having suicidal feelings in 2013, during legal proceedings concerning the custody of two of his children. Tr. at 129. The Individual testified that he exercises at the recommendation of the Doctor. Tr. at 131-132.

The Psychologist observed the testimony of the other witnesses before he testified. He testified that the Individual appeared to be “very honest” and “undefensive.” Tr. at 139. The Psychologist testified that the Individual’s psychological testing indicated that the Individual has experienced mania. Tr. at 140-141. The Psychologist noted that the type of mania experienced by the Individual made the Individual “feel grateful for the medicine, because it takes away the anger, the disturbing thoughts, that [he does not] want to feel,” therefore, the Psychologist opined, the Individual is more likely to comply with his treatment.” Tr. at 142. The Psychologist testified that “I don’t have as much concern about relapses at this point,” although he noted that he cannot rule out the possibility of relapse. Tr. at 144, 145. The Psychologist further noted that a relapse “could be serious because of the mean thoughts that he had when he did have that maybe seven or so years ago.” Tr. at 144. The Psychologist noted that the fact that he has had seven years since having such thoughts is a positive prognostic sign for the Individual.<sup>5</sup> Tr. at 144. The Psychologist further opined that the Individual’s prognosis is “good.” Tr. at 145, 147, 153. He noted that the Individual’s twin sister provides him with a good support system, and that his support system is more than adequate. Tr. at 146, 154. The Psychologist noted that there were three prognostic indicators in the Individual’s favor: (1) He has had seven years without a relapse; (2) the type of mania that he has is less likely to result in a relapse; and (3) he adhered to his treatment regime without interruption. Tr. at 149.

## 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 a DOE consultant psychologist, who evaluates 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.”

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<sup>5</sup> While there is some evidence of issues prior to 2013, there is no evidence in the record that the Individual has suffered from any such issues since he began his Depakote in 2013 (a period of approximately 5 years).

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 seven years without further symptoms. A DOE contractor psychologist has 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 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