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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: October 23, 2018 ) Case No.: PSH-18-0076  
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Issued: January 22, 2019

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**Administrative Judge Decision**  
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Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be granted.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The United States Office of Personnel Management (OPM) Federal Investigative Services conducted a background investigation on the Individual which revealed that the Individual received emotional counseling that he failed to disclose in connection with seeking a security clearance. DOE Ex. 5 at 1. OPM sent the Individual a Letter of Intent (LOI) requiring him to address this issue. *Id.* The Individual's response to the LOI indicated that he was diagnosed with Bipolar Disorder in 2006, and that this diagnosis was changed to General Mood Disorder caused by anxiety in 2012. *Id.* Consequently, the local security office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on February 23, 2018. DOE Ex. 8 at i.

Based upon information provided by the Individual in the PSI, the LSO recommended that the Individual undergo a psychological evaluation. DOE Ex. 4 at 1. A DOE-contracted psychiatrist

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<sup>1</sup> The regulations define access authorization as "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). This Decision will refer to such authorization as access authorization or security clearance.

(DOE Psychiatrist) conducted an evaluation of the Individual in May 2018 (Psychological Evaluation). DOE Ex. 3 at 1; DOE Ex. 7 at 1.

The DOE Psychiatrist concluded that the Individual suffered from Bipolar Disorder, and that this condition impaired the Individual's judgement, stability, reliability, and trustworthiness. DOE Ex. 7 at 9. Based on the DOE Psychiatrist's diagnosis, the LSO informed the Individual, in a notification letter dated July 26, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under "Guideline I, Psychological Conditions." DOE Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing concerning the matter. At the hearing, the LSO introduced nine (9) numbered exhibits (DOE Ex. 1-9) into the record and presented the testimony of the DOE Psychiatrist. The Individual introduced four (4) lettered exhibits (Ind. Ex. A-D) into the record and presented the testimony of four (4) witnesses, including himself. I received a transcript of the proceedings (Tr.) on January 17, 2019.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline I (Psychological Conditions) as the basis for denying the Individual a security clearance. DOE Ex. 1.

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. The Notification Letter asserted that: the DOE Psychiatrist determined that the Individual met the criteria for Bipolar I Disorder, in Partial Remission, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, and that this condition can impair the Individual's judgement, stability, reliability, or trustworthiness. DOE Ex. 1. The DOE Psychiatrist's determination that the Individual met the diagnostic criteria for Bipolar I Disorder justifies the LSO's invocation of Guideline I in the Notification Letter. Guideline I at ¶ 28(b).

## **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.

#### IV. FINDINGS OF FACT AND ANALYSIS

In reaching his determination that the Individual met the diagnostic criteria for Bipolar I Disorder under the *DSM-5*, the DOE Psychiatrist relied on the Individual’s long history of manic and depressive episodes, treatment history, minimization of his prior diagnosis, family history of mental illness, and deficient performance on mental status tests during the Psychological Evaluation. Tr. at 107–10; DOE Ex. 7 at 8. The Individual reported during the PSI that he was hospitalized twice for manic or depressive episodes and outbursts when he was a minor, that he ran away from home during manic episodes as a minor, that he previously experienced suicidal ideation, and that depressive episodes had previously caused him to miss work and school. DOE Ex. 8 at 20, 24–26, 31. The Individual also said that he experienced manic and depressive episodes with decreasing frequency as he aged, and that he had not experienced an episode in approximately two (2) years. *Id.* at 33.

During the Psychological Evaluation, however, the Individual reported experiencing a depressive episode twelve (12) weeks prior to the Psychological Evaluation. DOE Ex. 7 at 8. The Individual also reported that he had not experienced a day without a low or elevated mood since childhood, and that he struggled with negative thoughts multiple times each week. *Id.* at 6. The DOE Psychiatrist’s report indicated that the Individual was prescribed three (3) medications for the treatment of Bipolar Disorder, which the Individual had been weaned off of over a period of time and discontinued using approximately eighteen (18) months prior to the Psychological Evaluation because the medical practitioner treating the Individual did not believe that the Individual suffered from Bipolar Disorder. *Id.* at 2. The Individual indicated during the PSI and Psychological Evaluation that he did not believe that he suffered from Bipolar Disorder. *Id.* at 8–9; DOE Ex. 8 at 16.

The DOE Psychiatrist’s report lists numerous items in support of the DOE Psychiatrist’s finding of cognitive impairment in the Individual. Among others, the DOE Psychiatrist noted the Individual’s failure to complete written psychological tests as part of the Psychological Evaluation without prompting, the Individual’s reports of low performance in academic work due to not applying himself, the Individual’s subnormal recollection of objects after the passage of one (1) minute and five (5) minutes, the Individual’s inability to recite six (6) digits in reverse, and his decision to take a call from his girlfriend concerning an outing later that day during the Psychological Evaluation. DOE Ex. 7 at 5–8.

During the hearing, the Individual presented the testimony of a forensic psychologist (Individual’s Psychologist) who conducted an evaluation of the Individual on November 21, 2018. The Individual’s Psychologist prepared a report of his evaluation in which he opined that the Individual

did not suffer from Bipolar Disorder, or any other condition that would impair his judgement, reliability, or trustworthiness. Ex. A at 6. In reaching his conclusion, the Individual's Psychologist relied on his belief that: the Individual was successfully weaned from medication for Bipolar Disorder in approximately 2015; the Individual had not experienced manic or hypomanic episodes since being weaned from the medication; and the Individual may have been misdiagnosed with Bipolar Disorder as a minor. Tr. at 19–24, 33; Ex. A at 5–6. In support of his opinion that the Individual's childhood diagnosis was incorrect, the Individual's Psychologist's asserted that diagnosing Bipolar Disorder in children is difficult, the condition is over diagnosed, and the condition is rare compared to depression, which might also have explained the Individual's depressive episodes. Tr. at 19–24, 33. The Individual also offered the testimony of two (2) character witnesses who previously employed the Individual as a store manager who reported that the Individual demonstrated trustworthiness, reliability, and exceptional work ethic in the approximately four (4) years for which he worked for them. *Id.* at 48–49, 57–58.

I have thoroughly considered the record of this proceeding, including the exhibits and the testimony presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. The security concerns at issue center on whether the Individual suffers from a psychological condition that impairs his judgement, stability, reliability, or trustworthiness. After due deliberation, I find that the Individual should not be granted a DOE security clearance. Specifically, I cannot find that granting the Individual a security clearance would not endanger the common defense and security, or that doing so would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The relevant evidence and my specific findings in support of this decision are discussed below.

#### **A. Adjudicative Guideline I Considerations**

The central question in this proceeding is whether or not the Individual suffers from Bipolar Disorder. Three (3) of the five (5) mitigating factors under Guideline I concern treatment for a treatable condition or the subsidence of a temporary condition. Guideline I at ¶ 29(a), (b), (d). The DOE Psychiatrist and the Individual's Psychologist agree that Bipolar Disorder, when properly diagnosed, is a lifelong condition, not a temporary condition. Tr. at 35–36, 96. Both experts also agree that the Individual discontinued treatment for Bipolar Disorder and is not currently pursuing treatment for Bipolar Disorder from a qualified medical provider. *Id.* at 23, 25; DOE Ex. 7 at 1. Accordingly, mitigating factors at ¶ 29(a), (b) and (d) are inapplicable in the present case. Therefore, I will focus my analysis on the remaining two (2) mitigating factors.

An Individual may mitigate security concerns under Guideline I if “there is no indication of a current problem.” Guideline I at ¶ 29(e). After observing the entirety of the hearing, and all testimony offered therein, the DOE Psychiatrist testified that his diagnosis of the Individual was unchanged and that he believed that the Individual's Bipolar Disorder could impair the Individual's judgement, reliability, or trustworthiness without proper treatment. Tr. at 97. The Individual's Psychologist asserted at the hearing that his evaluation of the Individual did not reveal any indications of a current psychological problem, and opined that the DOE Psychiatrist had inappropriately relied on what the Individual's Psychologist believed to be a misdiagnosis of the Individual in his youth in reaching the conclusion that the Individual suffered from Bipolar Disorder. *Id.* at 16, 33. The Individual's character witnesses also presented glowing testimony as

to the Individual's personal and professional characteristics, and opined that the Individual was extremely reliable and trustworthy. *Id.* at 48–49, 57–58. However, the testimony of lay witnesses is of negligible weight with respect to the medical question of the Individual's psychological well-being. *See Personnel Security Hearing*, PSH-18-0051 at 6 (2018); *see also Lane v. Dist. of Columbia*, 887 F.3d 480, 485–86 (D.C. Cir. 2018) (determining that a court may exclude lay witness testimony as to whether or not an individual suffers from Bipolar Disorder under Rule 701 of the Federal Rules of Evidence because a medical diagnosis is based on scientific, technical, or other specialized knowledge).

The DOE Psychiatrist's testimony that the Individual suffers from Bipolar Disorder was more persuasive than the Individual's Psychologist's testimony that the Individual does not suffer from Bipolar Disorder because: (1) the DOE Psychiatrist's opinion was based on an understanding of the Individual's medical history that was more consistent with the facts in the record than the Individual's Psychologist, and (2) the DOE Psychiatrist drew more reasonable conclusions from the facts in the record than did the Individual's Psychologist.

The DOE Psychiatrist demonstrated a better understanding of the Individual's relevant medical history, as set forth in the record, than did the Individual's Psychologist. During the PSI, the Individual reported experiencing a depressive episode during late 2017 which led him to seek assistance from a counselor. Ex. 8 at 35. While the DOE Psychiatrist cited this fact in his report, the Individual's Psychologist indicated in his report that he believed that the Individual had not experienced symptoms of Bipolar Disorder since 2015. *Compare* DOE Ex. 7 at 8 *with* Ind. Ex. A at 5. The Individual's Psychologist also seemed to mischaracterize the reasons for the Individual's hospitalizations as a minor. When asked during the PSI why he was previously hospitalized, the Individual reported that "it was generally [because of] bipolar and depression outbursts." DOE Ex. 8 at 16. While the DOE Psychiatrist understood the hospitalizations to have resulted from the Individual's depressive symptoms, the Individual's Psychologist characterized the hospitalizations as opportunities to adjust the Individual's medications. *Compare* DOE Ex. 7 at 3 *with* Tr. at 21 *and* Ind. Ex. A at 3.

The Individual's Psychologist also drew conclusions I found unreasonable based on the facts in the record. During the hearing, the Individual's Psychologist challenged the notion that the Individual could reliably self-report his symptoms. The DOE Psychiatrist based his opinion that the Individual's prior diagnosis of Bipolar Disorder was accurate, in part, on the Individual's self-reporting of manic and depressive episodes during childhood and, with respect to depressive episodes, into adulthood. Ex. 7 at 8; *see also* Ex. 8 at 32–33. The Individual's Psychologist dismissed this information, and opined that the Individual's self-reporting of manic episodes was not reliable on the basis of his belief that a mental healthcare provider should probe a patient's specific symptoms to determine whether or not the symptoms constitute a manic or depressive episode. Tr. at 28–29. The Individual's Psychologist likewise dismissed the Individual's self-report to the DOE Psychologist of frequent mood swings as normal for college students. *Id.* at 25, 30. However, when answering a question concerning the purpose of ongoing counseling for Bipolar Disorder among properly diagnosed individuals, the Individual's Psychologist testified that "[m]ost people who have been through [manic or depressive episodes] a number of times know the signs." *Id.* at 27. I find the oscillating testimony of the Individual's Psychologist on this issue unpersuasive. If, as the Individual's Psychologist admitted, persons who have experienced manic and depressive episodes can recognize them as such, then I see no reason that the DOE Psychiatrist should not

have credited the Individual's self-reporting of his symptoms in light of his medical history of experiencing such symptoms.

The Individual's Psychologist also seems to have relied on speculation with respect to critical elements of his opinion. The Individual's Psychologist seemed to attribute significant weight to the over-diagnosis of Bipolar Disorder. Ind. Ex. A at 6; Tr. 22. However, he offered no empirical evidence as to the frequency of this over-diagnosis to inform my consideration of the likelihood that the Individual was misdiagnosed. The DOE Psychiatrist acknowledged that Bipolar Disorder is "somewhat overdiagnosed," but argued that misdiagnosis is often based on an underdeveloped medical history and noted that the Individual manifested symptoms consistent with a diagnosis of Bipolar Disorder for many years. Tr. at 82–83. The Individual's Psychologist also unduly relied on the opinion of a counselor with whom the Individual consulted at his college that the Individual did not have a condition that impaired his judgement, reliability, or trustworthiness despite the facts that the Individual met with the counselor only once per year in 2016 and 2017 and that the counselor told an OPM investigator that the counseling he provided at the college did not include diagnosis or treatment of mental illnesses. *See id.* at 16 (testifying that he agreed with the college counselor's statement to the effect that the Individual's judgement and reliability were sound); *see also* Ind. Ex. A at 5; DOE Ex. 9 at 70.

In evaluating whether or not the Individual's psychological condition presents "a current problem," I am mindful of the Individual's heavy burden to establish that granting him access authorization would be "clearly consistent with the national interest." *Egan*, 484 U.S. at 531; *see also Personnel Security Hearing*, TSO-0903 at 10 (2010) (citing *Egan* in denying access authorization to an applicant who raised security concerns under Guideline I in a case where experts provided conflicting opinions as to the applicant's psychological condition). I find the DOE Psychiatrist's testimony more compelling than that of the Individual's Psychologist, and accordingly conclude that the Individual has not mitigated the security concerns under Guideline I by demonstrating that "there is no indication of a current problem" under ¶ 29(e) of the Adjudicative Guidelines.

An individual can also mitigate security concerns under Guideline I through a "recent opinion by a duly qualified mental health professional . . . that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation." Guideline I at ¶ 29(c). The Individual's Psychologist asserted that the DOE Psychiatrist erroneously determined that the Individual was in partial remission from Bipolar Disorder because the *DSM-V* provides that a person suffering from Bipolar Disorder is in full remission if they do not experience symptoms for at least two (2) months. Tr. at 40–41; *see also* Ex. A at 6. However, even if the DOE Psychiatrist improperly characterized the Individual as in partial remission, the DOE Psychiatrist compellingly testified that at least eighty-five percent (85%) of patients with Bipolar Disorder experience symptoms again in their lives after going into remission. Tr. at 82. The Individual's Psychologist likewise testified that, among properly diagnosed individuals, remission "doesn't mean the disappearance of symptoms." *Id.* at 22. The DOE Psychiatrist further testified that the Individual is at significant risk of recurrence of manic or depressive episodes that could negatively affect his judgement, reliability, or trustworthiness and that, without proper treatment, he may not recognize the recurrence of symptoms in time to mitigate their effects. *Id.* at 106, 111.

I find that the DOE Psychiatrist's testimony is persuasive, and that, even if the DOE Psychiatrist improperly determined that the Individual was in partial remission rather than full remission, the

Individual does not have a sufficiently low probability of recurrence or exacerbation of his condition, especially in the absence of treatment. Accordingly, I find the mitigating factor set forth at ¶ 29(e) of the Adjudicative Guidelines inapplicable.

## VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guideline I of the Adjudicatory Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

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Administrative Judge

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