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In the Matter of: Personnel Security Hearing )  
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Filing Date: December 28, 2018 ) Case No.: PSH-18-0091  
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Issued: March 1, 2019

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**Administrative Judge Decision**

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Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 restored.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In April 2018, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) in which he disclosed that he was diagnosed with Bipolar Disorder in 2018 and was pursuing treatment to manage his symptoms. DOE Ex. 9 at 40–41. The local security office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on July 17, 2018. DOE Ex. 8 at i.

As the information provided by the Individual in the PSI presented unresolved security concerns, the LSO recommended that the Individual undergo a psychological evaluation. DOE Ex. 4 at 1. A DOE-contracted psychologist (DOE Psychologist) conducted an evaluation of the Individual in August 2018 (Psychological Evaluation). DOE Ex. 6 at 1.

The DOE Psychologist concluded that the Individual suffered from Bipolar Disorder, and that this condition impaired the Individual's judgement, stability, reliability, and trustworthiness. DOE Ex. 6 at 5. Based on the DOE Psychologist's report, the LSO informed the Individual, in a notification

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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.

letter dated November 19, 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 Psychologist. The Individual introduced unlabeled exhibits, which I organized into three (3) lettered exhibits (Ind. Ex. A–C), into the record and presented his own testimony. I received a transcript of the proceedings (Tr.) on March 1, 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 Psychologist determined that the Individual met the criteria for Bipolar II Disorder, most recent episode hypomanic with anxious distress, rapid cycling, in Partial Remission, under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, which condition can impair the Individual’s judgement, stability, reliability, or trustworthiness; and also that the Individual’s symptoms of psychomotor agitation, decreased concentration, flight of ideas and racing thoughts, pressured speech, and hypersexuality can impair his judgement, stability, and reliability as a result of his lessened impulse control. DOE Ex. 1. The Individual’s impulsive behavior and the DOE Psychologist’s determination that the Individual met the diagnostic criteria for Bipolar II Disorder justify the LSO’s invocation of Guideline I in the Notification Letter. Guideline I at ¶¶ 28(a)–(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

In 2017, a naturalist the Individual was seeing for various health and wellness services suggested to the Individual that he might be suffering from Bipolar Disorder and referred the Individual to a psychiatrist. DOE Ex. 8 at 10–12. The psychiatrist to whom the naturalist referred the Individual diagnosed the Individual with Bipolar II Disorder in January 2018 and prescribed the Individual 25mg of Lamotrigine. *Id.* at 13, 32. This dosage was insufficient to control the Individual’s symptoms, and the psychiatrist later increased the Individual’s Lamotrigine dosage to 300mg and added another medication, Aripiprazole 5mg, which the Individual deemed effective at managing his symptoms. *Id.* at 13–14.

According to the Individual, he experienced what he characterized as “manic episodes” approximately twice per month from when he was a teenager until he began taking Lamotrigine at 300mg. *Id.* at 17–19. The Individual stated during the PSI that his mind races and he becomes angry when he experiences manic episodes. *Id.* The Individual also reported undergoing what he described as “depressive episodes” approximately once per month, during which he experienced suicidal ideation. *Id.* at 18. The Individual stated during the PSI that he is not able to identify the onset of manic episodes, but that his wife is able to detect the onset of manic episodes based on changes in the Individual’s behavior. *Id.* at 39–40.

The Individual indicated during the PSI that he has acted impulsively during manic episodes. The Individual reported that, during manic episodes, he made individual purchases of approximately one hundred dollars (\$100.00) each, even though he knew he should not have, felt dissatisfaction with his marriage, engaged in binge drinking, and acted in a hypersexual manner. *Id.* at 24, 41, 48–49, 54. The Individual described how, during one manic episode, he consumed alcohol and made sexual advances towards a co-worker while travelling for work. *Id.* at 55. When asked during the PSI if he had engaged in any illegal acts as a result of his hypersexual behavior during manic episodes, the Individual recounted how on two (2) occasions he had “an episode where [he] held [his] wife down [and] [it] was like an out-of-body experience.” *Id.* at 70–71.

The DOE Psychologist conducted the Psychological Evaluation on August 30, 2018, during which she administered the Minnesota Multiphasic Personality Interview-2-Restructured Form (MMPI-2-RF) and the Rorschach Inkblot Test (Rorschach Test) and conducted a clinical interview. DOE Ex. 6 at 2. The Individual’s mostly average results on the Rorschach Test led the DOE Psychologist to dismiss concerns that the Individual engaged in delusional, dissociative, or aggressive thinking outside of hypomanic episodes. *Id.* at 4. However, the DOE Psychologist noted with concern the Individual’s limited sensitivity to his internal experiences, and suggested that this lack of attention to nuance caused him to fail to recognize the onset of hypomanic episodes. *Id.* at 4–5.

In light of the Individual's relevant medical history, his description of his symptoms, and the frequency with which the Individual moved between hypomanic and depressive episodes in the past, the DOE Psychologist concluded that the Individual met the diagnostic criteria for Bipolar II Disorder, most recent episode hypomanic with anxious distress, rapid cycling, in Partial Remission, under the *DSM-5*. *Id.* at 5. The DOE Psychologist also noted that the Individual's impulsive behavior during hypomanic episodes could impair his judgement, stability, and reliability. *Id.* The DOE Psychologist opined that the Individual's prognosis was good, provided that he pursued treatment with a qualified medical practitioner. *Id.* In light of the Individual's limited ability to recognize the onset of hypomanic episodes, the DOE Psychologist recommended that the Individual participate in counseling focused on psychoeducational approaches to recognizing the signs of oncoming episodes and providing appropriate interventions. *Id.*

During the hearing, the Individual recounted how he had experienced "episodes of mostly anger and strange sexual behaviors," in which he lashed out at his wife in fits of anger that he could not control and sought extra-marital sexual partners, before being prescribed an effective dosage of medication for his Bipolar Disorder. Tr. at 15–16. The Individual reported that he still experienced biweekly "manic episodes where [he would] pursue compulsive [sic] pornography," but that otherwise he felt that his medication effectively managed his symptoms. *Id.* at 20. The Individual testified that he now confides in his wife when he is experiencing these episodes, that they work together "to manage the symptoms as best we can," and that he will "just stay home, don't go anywhere, and try to feel better, kind of wait it out," when he experiences these episodes. *Id.*

Although the Individual reported that his medication regimen was effective, he testified at the hearing that he had not regularly met with his psychologist or participated in psychoeducational counseling as recommended by the DOE Psychologist. The Individual could not recall meeting with his psychiatrist after receiving the DOE Psychologist's report until two (2) days prior to the hearing, though he indicated that he had called his psychiatrist from time-to-time to adjust the levels of his medication. *Id.* at 33. The Individual testified that his psychiatrist declined to testify on his behalf at the hearing or provide a letter concerning his status until he participated in additional sessions with the psychiatrist. *Id.* at 18. As of the date of the hearing, the Individual had not participated in any form of psychoeducational counseling. *Id.* at 40.

After observing the entirety of the hearing, and all of the testimony offered therein, the DOE Psychologist testified that her diagnosis of the Individual was unchanged and that the Individual's Bipolar Disorder continued to impair his judgement during hypomanic episodes. *Id.* at 55. The DOE Psychologist also indicated that the Individual had failed to meet her treatment recommendation with respect to pursuing psychoeducational counseling, and that his current approach of "just staying home and white-knuckling it when he's having hypomanic symptoms" was not an optimal approach to managing his symptoms. *Id.* at 54–55. The DOE Psychologist opined that psychoeducational counseling is an essential component of treatment of Bipolar Disorder because Bipolar Disorder is a recurring condition and counseling can teach an individual suffering from Bipolar Disorder to recognize the signs of an impending episode and manage the episode through an individualized plan. *Id.* at 48–49. Without the counseling she recommended, the DOE Psychologist expressed that the Individual is likely to experience symptoms of greater severity more frequently and present a greater security risk during hypomanic episodes. *Id.* at 52, 56–57.

## V. ANALYSIS

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's security clearance should not be restored. Specifically, I cannot find that restoring the Individual's 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 Individual did not contest his diagnosis or the allegations set forth in the Notification Letter, but argued that there was no reason to believe that he could not handle classified material because his medication was helping him to manage his symptoms and he believed that "everything is in control." Tr. at 36. The Individual asserted that the facts that he previously held several security clearances without a security incident for numerous years, honestly self-reported his diagnosis, and had never been hospitalized or arrested as a result of his condition demonstrated that he was not a risk to national security. Tr. at 8–9.

An individual may mitigate security concerns under Guideline I of the Adjudicative Guidelines if "the past psychological/psychiatric problem was temporary . . ." Guideline I at ¶ 29(d). The DOE Psychologist testified that Bipolar Disorder is "by definition a disorder that recurs," not a temporary one. Tr. at 48. Therefore, I find this mitigating factor inapplicable.

An individual may also mitigate security concerns under Guideline I by demonstrating "ongoing and consistent compliance with [a] treatment plan" or by "receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional." Guideline I at ¶ 29(a)–(b). In this case, the Individual has not complied with the DOE Psychologist's recommendation that he pursue psychoeducational counseling and has not met with his own mental health professional on an adequately frequent basis for her to provide a prognosis. *Supra* p. 4. Accordingly, the Individual has not satisfied these mitigating criteria.

Finally, an individual may mitigate security concerns under Guideline I by showing that his "condition is under control or in remission[] and has a low probability of recurrence or exacerbation," or that "there is no indication of a current problem." Guideline I at ¶ 29(c), (e). The DOE Psychologist testified that the Individual's frequent hypomanic episodes present a current problem because the Individual's judgement is impaired during these episodes, and opined that the Individual could better manage these risks by following her recommendation to participate in psychoeducational counseling. *Supra* p. 4. Absent effective treatment, the DOE Psychologist testified that the Individual was very likely to experience more frequent and severe symptoms that could impair his judgement. Tr. at 56–57. Accordingly, I find that the Individual has not satisfied these mitigating criteria.

The Individual has not satisfied any of the mitigating criteria under Guideline I, and concerns persist about his ability to manage his hypomanic symptoms without the counseling recommended by the DOE Psychologist. Therefore, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

## **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's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

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