

*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 12, 2021) Case No.: PSH-21-0015
)
)
_____)

Issued: April 13, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ 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 be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In May 2017, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP). Ex. 7 at 50. In response to one of the questions regarding psychological and emotional health, the Individual responded that he was receiving treatment from a health care professional. Ex. 7 at 41. The Individual later underwent a psychological evaluation by a DOE consultant psychologist (Psychologist) in July 2019. Ex. 5.

Due to unresolved security concerns related to the Individual’s psychological condition, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual’s 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) of the Adjudicative Guidelines. Ex. 1.

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted seven numbered exhibits (Exhibits 1-7) into the record and presented the testimony of the Psychologist. The Individual introduced six lettered exhibits (Exhibits A-F) into the record, and presented the testimony of three witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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) (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 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline I of the Adjudicative Guidelines. Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b).

As support for citing Guideline I, the LSO cited the Psychologist’s report (Report), which concluded that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) criteria for Bipolar II Disorder with a persistent, abnormally irritable mood accompanied by flight of ideas, distractibility, and increase in goal directed activity. Ex. 1. The LSO additionally cited the Psychologist’s opinion that the Individual’s Bipolar II illness is not fully

under control which can significantly impair his judgment, stability, reliability, and trustworthiness. *Id.*

IV. Findings of Fact

As stated above, the Individual underwent a psychological evaluation in July 2019. Ex.5. Following the evaluation, the Psychologist issued a report (Report). *Id.* During the evaluation, the Individual reported that, in 2015, he began seeking professional mental health treatment for symptoms of anger and agitation. *Id.* at 2. When the symptoms continued, he sought further treatment and began meeting regularly with a psychologist through his employer's Employee Assistance Program (EAP), in approximately September 2015. *Id.* In September 2016, he completed a psychiatric evaluation, which indicated a diagnosis of Bipolar Disorder I, and he was prescribed medication from his then psychiatrist (Psychiatrist A). *Id.* at 3. The Individual also completed an Intensive Outpatient Treatment program (IOP) in 2016. *Id.*

In December 2018, after undergoing a two-year period of treatment with Psychiatrist A, the Individual decided to stop taking medication entirely as he had tried several different medications, none of which were effective, and all of which had adverse side effects. *Id.* In spring 2019, the Individual completed the IOP program a second time. *Id.* However, he found that his symptoms continued, and he additionally began experiencing episodes of depression, including suicidal ideation. *Id.* Therefore, in 2019, the Individual sought a second opinion from another psychiatrist (Psychiatrist B), who prescribed him a new medication. *Id.*

During the 2019 psychological evaluation, the Individual reported to the Psychologist that he was still taking the new medication as prescribed by Psychiatrist B. *Id.* The Individual also reported that his medication regimen, at the time of the evaluation, had been of very limited help, and that he still experienced periods of intense focus and distraction. *Id.* at 4. He also reported depressive symptoms, including suicidal ideation, which he indicated that he had experienced as recently as several weeks prior to the evaluation. *Id.* at 4. The Report noted that the Psychologist spoke to the Individual's treating psychologist (Treating Psychologist), who corroborated the Individual's account of his treatment with her. *Id.* The Treating Psychologist stated that the Individual "presented with a mix of symptoms and a level of acuity that demonstrate" a diagnosis of Bipolar II Disorder. *Id.*

Ultimately, the Psychologist diagnosed the Individual with Bipolar II Disorder and concluded that his most salient criteria are a persistent, abnormally irritable mood with flight of ideas, distractibility, and increase in goal-directed activity. *Id.* at 5. He explained that the Individual "does not appear to have suffered a manic episode nor to have exhibited psychotic features...[and][t]here has not been any severe impairment in his social or occupational functioning. However, his Bipolar II illness is not under control and can therefore significantly impair his judgment, stability, reliability, or trustworthiness." *Id.* The Psychologist opined that, to provide assurance that his partially controlled condition improves, the Individual would need to demonstrate attendance of psychiatric appointments at a minimum of once every eight weeks for ten months, provide evidence of compliance with his medication regimen, and report any decrease in dosage or medication changes over the same timeframe. *Id.* The Psychologist also recommended that the Individual continue meeting with his Treating Psychologist, or other equivalent provider with a specialty in treating severe mood disorders and provide documentation of his attendance. *Id.* He additionally

suggested that the Individual attend a support group for Bipolar Disorders. *Id.* The Psychologist opined that, if the Individual adhered to this program, then his prognosis would be good. *Id.*

At the hearing, three witnesses testified on the Individual's behalf: his supervisor (Supervisor), his wife (Wife), and the Individual himself. The Supervisor testified that, in his experience working with the Individual, the Individual has been conscientious, thorough, and professional in all of his interactions at the worksite. Tr. at 14. He testified that the Individual is reliable and follows through with responsibilities. *Id.* at 15. He also noted that he has never observed the Individual engage in any concerning behavior or noticeable fluctuations in his mood, including during the frequent, very stressful situations that arise at work. *Id.* at 17.

The Individual did not dispute the allegations stated in the Summary of Security Concerns but sought to demonstrate that he had mitigated the security concerns. Tr. at 24-25, 34, 36-51, 53-57. He testified that he has been meeting with his treating psychiatrist (Psychiatrist) every two to four weeks for medication management since November 2019. *Id.* at 24-26, 60. The Individual stated that he and his Psychiatrist have discovered a medication regimen that enables him to remain stable and maintain his mood stability and quality of life. *Id.* at 32, 34. He explained that he has been using this medication regimen since May 2019, and although the medications are effective in treating his Bipolar II Disorder, his Psychiatrist has to continue to adjust the dosages to decrease side effects. *Id.* at 34, 81-83. In March 2021, the Individual and his Psychiatrist discovered a dosage that treats his Bipolar II Disorder symptoms successfully and causes no side effects. *Id.* at 34, 47, 50, 83. The Individual noted that he knows his medication is working effectively because he does not have any symptoms of depression, suicidal ideation, or hypomania, which the Individual described as being overly focused on a topic.² *Id.* at 28.

The Individual further testified regarding therapeutic treatments that aid him in managing his Bipolar II Disorder. *Id.* at 36-46. He testified and submitted evidence showing that he completed a 12-week therapeutic program called Dialectical Behavior Therapy (DBT) on December 14, 2020. *Id.* at 36-37; Ex. A at 2; Ex. D. He explained that he sought DBT treatment to increase his skills for distress tolerance. *Id.* at 36. He described and provided evidence for the specific tools he learned in DBT, including mindfulness, emotion regulation, distress tolerance, and interpersonal effectiveness. Ex. D at 2; Tr. at 37-40. He also testified to examples of where he used specific DBT tools to successfully manage stressful situations in his life. *Id.* at 40, 58-59.

In addition to completing the DBT program, the Individual testified that he has been receiving treatment with his Treating Psychologist for approximately five years. *Id.* at 42. He explained that he had seen her weekly in the last 12 months, and he currently sees her biweekly and intends to continue psychotherapy with her indefinitely. *Id.* at 45. He indicated that his Treating Psychologist

² In support of his testimony, the Individual submitted a letter from the Psychiatrist, dated March 10, 2021, which corroborates the Individual's testimony concerning the nature, duration, and frequency of her treatment with him. Ex. B at 1. The Psychiatrist stated that the Individual is compliant with his treatment plan, his condition is currently improving, he has done an excellent job of advocating for his mental health, and he meets regularly with his treating psychotherapist. *Id.*

is a valuable part of his support network and described his therapy sessions as helpful in identifying increased stressors and in developing strategies for symptom management.³ *Id.* at 43-45.

The Individual also testified regarding his support system and self-care practices. *Id.* at 47-57. In addition to relying on his mother and sister for support,⁴ the Individual stated that his wife is vital to his support network. *Id.* at 49-50. He explained that she is on the “front-line” of his disorder every day and has educated herself on Bipolar II Disorder through resources provided by the Individual’s Treating Psychologist. *Id.* at 50. He noted that she can readily identify if he is symptomatic. *Id.* at 50. He shared that he and his wife use a mobile-based software application (app) in which he documents and sends her an alert whenever he experiences a suicidal thought. *Id.* at 51. He indicated that, because of his willingness to disclose any concerning thoughts on the shared app, or to his treatment providers, his wife, his therapist, and his psychiatrist would all become aware if he ever had suicidal ideation. *Id.* at 51. He further testified that he has not had any suicidal ideation since July 2019, which comports with the letter from his Treating Psychologist. *Id.* at 53; Ex. F at 2. As for self-care, the Individual explained in detail how he ensures that he is getting adequate sleep each night, maintaining a healthy diet, and runs regularly for exercise to help stabilize his mood. *Id.* at 54-57.

Finally, the Individual acknowledged that his Bipolar II Disorder is an ongoing condition that will require him to continue to employ all of his treatment modalities in order to remain stable. *See id.* at 44-45. The Individual described the “pillars” of his treatment regimen as medication management, psychotherapy, and self-care. Although, he is aware there is no “silver bullet” for his disorder, he has worked hard to develop tools to manage his disorder. *Id.* at 44-45, 47. He noted that as life changes, he is aware that he will need to adapt in the ways that he implements the “pillars” of his treatment. *Id.* at 47.

The Wife testified that she is aware of the various types of mental health treatment and coping strategies the Individual uses to stabilize his Bipolar II Disorder, including the psychotherapy sessions with his Treating Psychologist, the tools he learned from DBT, and his self-care routines. *Id.* at 64–65, 71. The Wife stated that she has noticed a vast improvement in the Individual’s levels of irritability since he started taking his current medications two years ago. *Id.* at 69. She explains that the Individual keeps a log of his medications, and he consistently takes them as directed. *Id.* at 66-67.

The Wife corroborated that she is part of his support system and ensures that she holds him accountable for his behavior. *Id.* at 70. She explained that, if she notices a decline in his mental stability, she “call[s] him out on it” and tells him that he needs to contact his Treating Psychologist or his Psychiatrist. *Id.* at 70. His wife also explained that she is very involved in the Individual’s treatment, and she trusts him to tell her if he is experiencing symptoms or problems with his medication. *Id.* at 73–74. She elaborated, stating that the Individual shares an app with her that allows her to gauge his mood and understand if he is experiencing “a low.” *Id.* at 75. This shared information allows her to help the Individual meet any needs that he may have. *Id.*

³ In support of this testimony, the Individual submitted a letter from his Treating Psychologist dated May 18, 2021. Ex. F.

⁴ The Individual testified that both his mother and sister have experience with managing mental health disorders. *See* Tr. at 47-50.

The Psychologist testified after observing the hearing and listening to the testimony of the witnesses. He opined that, at the time of the hearing, the Individual's Bipolar II Disorder was "under full control." *Id.* at 78. He further concluded that the Individual's Bipolar II disorder does not impair his judgment, reliability, and stability. *Id.* The Psychologist elaborated, stating that his opinion was based on the fact that the Individual has not only found a medication combination that works, but that he is also aware that his psychological condition is an ongoing condition, and he will have to continue to manage it using the methods and treatments as he is doing now. *Id.* The Psychologist also explained that the Individual's testimony regarding his high level of involvement with his treatment, including making records of his behaviors and his level of self-awareness, illustrates that he is engaging in reflection that supports his health and improves his condition. *Id.* at 80-81. Ultimately, the Psychologist also opined that the Individual's prognosis was "[v]ery good" because he was following all of the treatment recommendations, and his treatment regimens were firmly in place and provided for "a lot of checks and balances." *Id.* at 79.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses 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. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns noted by the LSO under Guideline I of the Adjudicative Guidelines. Accordingly, I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should be restored. The specific findings that I make in support of this decision are discussed below.

Certain personality conditions can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, or trustworthiness can serve as a disqualifying condition for a security clearance. *Id.* at ¶ 28(b). An Individual may be able to mitigate the security concerns if the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan. *Id.* at ¶ 29(a). Additionally, a recent opinion by a duly qualified mental health professional that an individual's previous condition is under control and has a low probability of recurrence or exacerbation may mitigate a security concern raised pursuant to Guideline I. *Id.* at ¶ 29 (c). Furthermore, if 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, the individual may be able to mitigate the security concerns. *Id.* at ¶ 29(b).

Here, the Psychologist diagnosed the Individual with Bipolar II Disorder and concluded that the Individual's psychological condition was not under control and could significantly impair his judgment, stability, reliability, or trustworthiness. However, at the time of the hearing, the Psychologist determined that the Individual is abiding by all treatment recommendations, and he concluded that the Individual's Bipolar II Disorder is "under full control." Tr. at 78; Guideline I at

¶ 29(a), (c). Furthermore, the Individual voluntarily sought help through EAP, completed two IOPs and a DBT program, participates in consistent psychotherapy sessions, and fully abides by the medication regimen prescribed by his Psychiatrist. Additionally, the Individual was able to credibly explain how he implements the tools he has learned to use to cope with symptoms associated with his Bipolar II Disorder. *See id.* at ¶ 29.

It is clear, based upon the evidence in the record and the testimony presented at the hearing, that the Individual has taken substantial steps to overcome the concerns regarding his Bipolar II Disorder. As such, I find that the Individual has adequately established that restoring his security clearance will not endanger the common defense and security, and that doing so is clearly consistent with the national interest. Thus, I conclude that the Individual has sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline I.

VI. Conclusion

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 have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline I. Accordingly, I find that the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals