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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: February 16, 2021) Case No.: PSH-21-0017
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Issued: May 6, 2021

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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.”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 should be granted a security clearance.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. During an investigation to determine her suitability to hold a security clearance, derogatory information relating to the Individual’s mental health history was discovered. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding 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 OHA Director appointed me as the Administrative Judge in this matter. At the hearing, the Individual testified on her own behalf. Transcript of Hearing (“Tr.”). The LSO presented the testimony of a psychologist who had evaluated the Individual and provided

¹ 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.

a report. The LSO submitted eight exhibits, marked as Exhibits 1 through 8 (“Ex.”). The Individual submitted 15 exhibits, marked as Exhibits A through P.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance under Guideline I (Psychological Conditions) of the Adjudicative Guidelines.

Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 28. Conditions that could raise a security concern and may be disqualifying include “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;” and “voluntary or involuntary inpatient hospitalization[.]” Adjudicative Guidelines at ¶ 28(b), (c). In the Notification Letter, the LSO alleged that (1) a DOE-consultant psychologist (“Psychologist”) concluded that the Individual met the criteria for a diagnosis of Bipolar I Disorder and the condition could impair her judgment, stability, reliability, or trustworthiness; (2) the Individual was involuntarily hospitalized for three days in 2003 for treatment of depression;³ and (3) the Individual was involuntarily hospitalized for three days in 2018 for treatment of anxiety, depression, suicidal ideation, and not sleeping. The LSO’s concerns under Guideline I are justified.

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) (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 or her 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.

² An Exhibit E was not included in the submission.

³ We take judicial notice that this hospitalization occurred when the Individual was a minor child.

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

IV. FINDINGS OF FACT

The Individual did not dispute the allegations contained in the Notification Letter. In a January 2020 report, the Psychologist opined that the Individual was compliant with prescribed medication regimens to treat her Bipolar I Disorder diagnosis, but she had failed to seek counseling when faced with increased symptoms, even, in one instance, after being urged to do so by family and friends. Ex. 5 at 5. He noted her history of two psychiatric hospitalizations, occurring in 2003, when the Individual was a pre-teen, and more recently in 2018. *Id.* at 3. He also noted that she saw her therapist only five times in the eight months prior to the evaluation, and she saw her psychiatrist only one time in the same period. *Id.* at 5. After opining that her condition was not adequately rehabilitated or reformed, he recommended a minimum of three visits per year with a psychiatrist and a similar regimen with a therapist or counselor. *Id.* at 6. He also stated that she should remain symptom free for a minimum of two years while maintaining ongoing appointments with treatment providers. *Id.*

The Individual testified that she was first diagnosed with Bipolar I Disorder in 2018 but had been voluntarily receiving treatment for mental health issues since childhood. Tr. at 20–21. She felt that her current treatment team was very good and testified that she “really connected with” her current counselor in particular. *Id.* at 21–22. She described enduring a severe and persistent hostile work environment for several months leading up to her 2018 hospitalization and cited the relentless and targeted nature of hostility as a major factor leading to her hospitalization. *Id.* at 23–31, 40–41. She acknowledged that she should have sought treatment earlier than she did and described symptoms she subsequently learned to look for when evaluating whether to seek additional treatment in the future. *Id.* at 42–43.

The Individual clarified the situation surrounding her involuntary hospitalization in 2018. She testified that she initially began a voluntary stay at a different hospital, endured repeated inappropriate advances from a male patient, and begged her parents to help her get to a safer place. Tr. at 70, 72. She was released from her voluntary hospitalization and shortly thereafter involuntarily hospitalized at a different hospital. *Id.* at 72.

The Individual testified that her mental health is much improved since 2018, due, in part, to a supportive and civil work environment and being prescribed the right medication, adding active and outdoor hobbies to her lifestyle, and better utilizing therapeutic resources such as counseling and a mood support group. Tr. at 43–45, 58, 63–64. The Individual testified that her psychiatrist’s online messaging portal has improved her access to treatment and, while she has always taken her medication as prescribed, her current prescriptions are working better than some past medication regimens.⁴ *Id.* at 45–50, 73. She sees her psychiatrist every four months, and she testified that she had seen her counselor regularly since 2019. *Id.* at 52–54; *see also* Ex. B at 1. She described how she works through feelings and anxiety with her counselor and testified that she can access

⁴ Her consistent compliance with her medication regimen is corroborated by a June 19, 2020, letter from her treating psychiatrist. Ex. A.

counseling sessions within a few days of her request. *Id.* at 51–52, 74. The Individual stated that the counseling is very helpful and that she intends to continue seeing her counselor. *Id.* at 52–53. She testified that her treatment and her lifestyle changes are sufficient to control her diagnosed condition and help her function appropriately. *Id.* at 54.

The Psychologist testified after observing the Individual’s testimony. He testified that the Individual’s willingness to seek treatment was compelling, and he noted that she had followed his care recommendations and maintained stability since the evaluation. Tr. at 80. He also noted that, in making his initial report, he was not aware of several of the Individual’s treatment sessions that occurred prior to the evaluation because she did not recall them and thus failed to report them.⁵ *Id.* at 79. He opined that her current treatment plan is effective, and he took a positive view of the Individual’s medication compliance and her communication with her treatment providers. *Id.* at 83. The Psychologist noted that Bipolar I Disorder is a lifelong condition, but it is readily controlled by treatment for most patients. *Id.* at 86–87. He testified that the Individual is adequately rehabilitated or reformed and that she was adequately stabilized. *Id.* at 83–84. He believed that the Individual would reach out to her treatment providers quickly if she experienced difficulties such as a relapse or increase in symptoms, or her providers would be able to identify issues and modify her treatment plan accordingly. *Id.* at 84. He also testified that the Individual appears to have appropriate stress responses and that she knows what to do to help herself going forward. *Id.* at 85.

V. ANALYSIS

Guideline I provides, in part, that security concerns arising from psychological conditions can be mitigated when:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) 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;

....

Adjudicative Guidelines at ¶ 29.

Based on the above, I conclude that the Individual has resolved the security concerns under ¶ 29(a). First, the record demonstrates that the Individual’s diagnosed condition, Bipolar I Disorder, can be controlled through treatment such as medication, counseling, and therapy. Second, the Individual has demonstrated an ongoing commitment to and compliance with her treatment plan, as evidenced by her active involvement in managing her medication, her regular visits with treatment providers, and her willingness to seek additional treatment if she notices an increase in symptoms. My findings are consistent with the Psychologist’s testimony that the Individual’s treatment plan has been effective.

⁵ A letter from the Individual’s counselor documents these sessions. Ex. L at 2-3.

I further conclude that she has resolved the security concerns under ¶ 29(b). There is no dispute that the Individual is currently and voluntarily receiving counseling and medical treatment from both a counselor and psychiatrist. Furthermore, not only is the condition amenable to treatment, but, according to the Psychologist, her treatment is effective, her condition is stabilized and rehabilitated, and she is therefore likely to address any increase in symptoms. Like the Psychologist, I find that the Individual has learned to recognize and address triggers and symptoms of her condition. I find that the Individual is likely to diligently pursue help in the future if faced with such triggers or symptoms and that she has a variety of resources available to her to do so. I also give particular weight to the Psychologist's testimony that the Individual is adequately rehabilitated and stabilized. I therefore conclude that the Psychologist's opinion is a favorable prognosis. Accordingly, I find that the Individual has resolved the Guideline I security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline I of the Adjudicative Guidelines. I further find that the Individual has succeeded in resolving those concerns. Therefore, I conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant the Individual access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals