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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: May 21, 2021) Case No.: PSH-21-0069
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Issued: September 17, 2021

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (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, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires him to hold a security clearance. During a background investigation, derogatory information was discovered relating to the Individual’s mental health, specifically a long-standing diagnosis of Bipolar Disorder and frequent, recent suicidal ideations. 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 to hold 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of two witnesses and testified on his own behalf. The LSO presented the testimony of the DOE contracted-psychologist (Psychologist) who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-21-0069 (hereinafter cited as “Tr.”). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted two exhibits, marked as Exhibits A and B.

¹ 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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline I (Psychological Conditions) provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. The conditions that could raise a security concern and may be disqualifying include behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline, that may indicate an emotional, mental, or personality condition; an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; voluntary or involuntary inpatient hospitalization; failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness; and pathological gambling. Adjudicative Guidelines at ¶ 28.

The LSO alleges that, in August 2020, the Psychologist diagnosed the Individual with Bipolar Disorder, current or most recent episode depressed, moderate. The LSO further alleges that the Psychologist opined, based on her evaluation of the Individual, that the Individual still struggled with anger outbursts and suicidal ideation, despite using medication to manage his symptoms. Accordingly, the LSO's security 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 entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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

At the hearing, the Individual presented the testimony of his girlfriend and his supervisor, and testified on his own behalf.

The girlfriend had lived with the Individual since March of 2018. Tr. at 14. The girlfriend testified that, in the four years she had known the Individual, she had never had any concerns with his judgment, reliability, or trustworthiness. *Id.* at 12. She commended the Individual's commitment to treating his Bipolar Disorder and managing his symptoms. *Id.* at 16, 23–24.

The girlfriend testified that, about a year before the hearing, the Individual began his current medication regimen of Abilify and Lamictal. Tr. at 17–18. She testified that the Individual had some angry outbursts during the first year of their relationship that were “off-putting,” but that his current medication regimen appeared to be working well. *Id.* at 12. She drew a distinct contrast between his angry outbursts in the first year of their relationship and his current anger management skills. *Id.* at 13. She noted that, during stressful situations, the Individual no longer reacted disproportionately. *Id.* at 19. She described the Individual as stable and even keeled. *Id.* at 19–20. She testified that the Individual would remove himself from triggering stressful situations and would go for walks to cool off when angry. *Id.* at 20. She was not aware of any suicidal ideations by the Individual since 2018 and had not noticed any symptoms of depressive cycles, such as sleeping more than usual. *Id.* at 20–22. The girlfriend also testified that the Individual has been working with a therapist for the past several weeks and has established a rapport with his therapist. *Id.* at 22–23. She described the Individual as having the support of family and friends, including herself. *Id.* at 27–28.

The supervisor testified that, in the two years the Individual had worked for him, he had not seen the Individual have an angry outburst or treat anyone with disrespect. Tr. at 47–48. He described the Individual as very professional and responsive. *Id.* In the past 12 to 18 months, he had been receiving positive feedback about the Individual from coworkers. *Id.* at 48–49. The supervisor had not received any complaints that the Individual was angry or displaying disproportionate reactions. *Id.* at 51. He noted that the Individual complied with suggestions and was amenable to constructive criticism. *Id.* The supervisor had not noticed a change in the Individual's behavior in the past year because the Individual had always been a well-behaved employee. *Id.* at 52.

The Individual testified that his current medication regimen had improved his ability to manage his symptoms. Tr. at 56. He had been on the combination of medications for about eight months and had been on his current dosage for about four months. *Id.* at 57. The stress of the administrative review process had caused him some anxiety and he had asked his prescriber for a medication

adjustment to help him manage those symptoms. *Id.* at 58–59. The Individual testified that he was on a different combination of medications when he was evaluated by the Psychologist and had suffered from distressing side effects at that time. *Id.* With his current combination, he was not experiencing those side effects. *Id.* at 59. The Individual felt stable with his current dosages and did not anticipate raising the dosages unless directed to do so by his medical provider. *Id.* at 59–60.

The Individual was seeing a therapist and felt that things were going well. Tr. at 60. He had completed three sessions by the date of the hearing and had attended in person and via telemedicine. *Id.* The Individual had struggled to find an in-network therapist who was taking new patients. *Id.* at 61. It took him three months to find a therapist and establish care. *Id.* He stated that he liked his therapist's candor and appreciated the flexibility to do telemedicine visits. *Id.* at 67.

The Individual noted that he was working with his therapist on identifying his triggers and testified in some detail as to what triggers he had identified and how they affected him. Tr. at 60–62. He described coping mechanisms such as excusing himself from triggering situations, breathing exercises, and emotional coping mechanisms that he processed internally when triggered. *Id.* at 62–63. The Individual was able to articulate the internal process he used to remain calm when triggered, describing his internal dialogue and actions he would take. *Id.* at 79. He reported feeling like he had more time to implement coping mechanisms since beginning his current medication regimen and felt like he had handled actual stressors better. *Id.* at 63. He testified that he liked that the therapist was focused on how his mental illness was affecting his life in the present, rather than what may have caused it in the past. *Id.* at 67. The Individual testified that he requested group therapy because he has found it valuable in the past. *Id.* at 66. He stated that he will begin attending group therapy in addition to his individual therapy when his individual therapist says he is ready. *Id.* at 65.

The Individual testified that he used to have pervasive thoughts of suicide, which he described as a constant “chatter in the back of [his] mind.” Tr. at 63, 73. However, since being on his current medication regimen, the Individual had not had any conscious suicidal ideations and he stated that the “chatter” had quieted. *Id.* at 63–64. He clarified that his girlfriend was able to tell when he was having severe and specific suicidal ideations, but the thoughts he had been having around the time of the Psychologist's evaluation were more like minor background “chatter.” *Id.* at 87–88.

The Individual was dedicated to continuing his medication regimen even if he felt better, stating that he had a chemical imbalance in his brain and his mental health medication was just as necessary for his health as his blood pressure medication. Tr. at 64–65. He testified that if he felt his medication was not working for him, he would consult his medical provider to try a new medication or have his dosage adjusted. *Id.* at 65. He further testified that, if he became unable to afford a treatment or medication, he would contact his clinic or the drug manufacturer to obtain a payment plan or voucher. *Id.* at 77–78. He had also identified a mental health services provider for indigent patients that he could turn to if all else failed. *Id.* at 78.

The Individual described a robust support system that included his girlfriend, his mother, and several friends. Tr. at 68. All were aware of his mental health condition and he felt that he could openly discuss his issues with them. *Id.* He testified that his relationship with his ex-wife is stable and he is consistently able to see his children. *Id.* at 84. The Individual reported improved emotional

responses to this difficult family situation. *Id.* at 84–86. The Individual expressed a desire to be a happier person and appeared hopeful that he could continue improving his mood for the long-term. *Id.* at 86.

The Psychologist testified that, based on the testimony she had heard at the hearing, the Individual’s depressive episode has been in remission for quite some time. Tr. at 93. She testified that while Bipolar Disorder is a lifelong diagnosis, she did not believe that the Individual’s condition was currently impairing his judgment or reliability. *Id.* at 93–94. She had never questioned his trustworthiness. *Id.* at 94. The Psychologist noted the Individual’s efforts to treat his condition, report and address difficulties as they arose, and learn coping mechanisms to mitigate his symptoms. *Id.* at 94–95. She testified that the Individual had consistently shown good insight and good judgment in seeking treatment for his symptoms and she viewed his request to adjust his medication as an indicator that the Individual was proactively involved in his treatment. *Id.* at 94–96. She was encouraged by the Individual’s work with his therapist and testified that his current treatment plan appeared adequate. *Id.* at 97. She gave the Individual a good prognosis. *Id.* at 97–98. In support of this prognosis, the Psychologist cited the Individual’s dedication to treating his condition and the Individual’s integrity and poise in discussing his difficulties and his treatment. *Id.* at 97. She further cited the Individual’s strong support system and his willingness to access additional resources to ensure that he is able to continue his treatment. *Id.* at 98.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Guideline I provides that security concerns arising from psychological conditions can be mitigated when: (1) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; (2) the individual has voluntarily entered and is currently receiving counseling or treatment program, if the condition is amenable to treatment, and the individual currently has a favorable prognosis by a duly qualified mental health professional; (3) a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government has recently opined that an individual’s

previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; (4) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and (5) there is no indication of a current problem. Adjudicative Guidelines at ¶29.

The Individual has demonstrated the applicability of mitigating conditions 1, 2, and 3. He has continued and added treatments for his disorder, utilizing medical and emotional techniques to manage his symptoms. His efforts appear to be working; he and those around him report fewer or no noticeable symptoms. The Individual appears knowledgeable about his diagnosis and demonstrated deep insight about his triggers, emotional processes, areas for improvement, and treatment needs. His actions demonstrate a willingness to seek help as needed, as well as a dedication to improving his mental health regardless of where he is employed. He stated his intent to continue both his medical and therapeutic treatments. The Psychologist—a duly qualified mental health professional contracted by the U.S. Government—gave him a good prognosis. She also opined that the Individual’s Bipolar Disorder diagnosis is lifelong, but currently in remission, and that the Individual was likely to seek adequate treatment if he had a surge of symptoms in the future.

The foregoing facts satisfy the criteria for three mitigating conditions for Guideline I. Accordingly, I find that the Individual has mitigated the Guideline I 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 fully 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 access authorization to the Individual at this time.

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals