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**United States Department of Energy
Office of Hearings and Appeals**

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| In the Matter of: Personnel Security Hearing |) | | |
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| Filing Date: September 30, 2021 |) | Case No.: | PSH-21-0122 |
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Issued: February 4, 2022

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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’s access authorization should be restored.

I. BACKGROUND

The DOE employs the Individual in a position that requires possession of a security clearance. In 2020, the Individual submitted an incident report that disclosed his recent hospitalization for mental health concerns. The DOE Local Security Office (LSO) conducted an investigation and requested that the Individual be evaluated by a DOE-consultant psychologist (“Psychologist”). Subsequently, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the derogatory information raised a security concern under Guideline I of the Adjudicative Guidelines.

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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of his therapist (“Therapist”) and testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted eleven exhibits, marked Exhibits A through K. The LSO submitted nine exhibits, marked Exhibits 1 through 9.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the basis for concern regarding the Individual’s eligibility to possess a security clearance. Ex. 1. Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern. *Id.* A condition that could raise a security concern is “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[.]” *Id.* at ¶ 28(b). The Notification Letter cited the Psychologist’s conclusion that the Individual met the Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition, criteria for Major Depressive Disorder (MDD), Moderate, Single Episode, which can impair his judgement, reliability, stability, or trustworthiness. Ex.1. The above allegation justifies the LSO’s invocation of Guideline I.

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 to permit the introduction of a very broad range of evidence

² The LSO’s exhibits were combined and submitted in a single, 65-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO’s exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 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

In late 2020, the Individual reported that he had been recently hospitalized for five days because he experienced “suicidal ideations.” Ex. 6 at 19. He subsequently participated in a Partial Hospitalization Program (“Partial Program”) for thirty-six days. *Id.* The Individual explained that he voluntarily went to the hospital after experiencing “extreme feelings of guilt and shame[,] . . . which resulted in suicidal thoughts[.]” Ex. 7 at 21.

While hospitalized, he received individual psychiatric consultations and group therapy. *Id.* at 22. During the Partial Program, he participated in “outpatient individual and group counseling sessions, consultation with a [p]sychiatrist, and group education classes.” *Id.* at 23. He also received prescriptions for medications to control his depression and anxiety. *Id.* at 24. After leaving the Partial Program, he continued to voluntarily attend a group therapy program to manage and address his impulses and emotions, and he continued to see a psychiatrist to manage his medications. *Id.* at 26. He also reported receiving behavioral therapy prior to his hospitalization, and he admitted that the condition had impaired his judgment and reliability at certain points in his life. *Id.* at 27-28.

The record includes the report provided by the Psychologist. Therein, the Psychologist recounted information the Individual provided during the evaluation and information the Psychologist gathered from the Individual’s Therapist and psychiatrist. The Individual stated that he had been taking an anxiety-reducing medication leading up to the date he was hospitalized. Ex. 8 at 34. He had also been feeling overwhelmed due to work stress, graduate school pressures, and the COVID-19 pandemic restrictions. *Id.* He further stated that he had been “suppressing his feelings, allowing things to fester, beating up on himself, keeping more to himself, and not reaching out for help.” *Id.* On the night of the incident, he got into a heated argument with his wife, thought of suicide, and voluntarily went to the hospital upon the advice of his psychiatrist. *Id.* He described making positive changes in his lifestyle and treatment since his hospitalization. *Id.* After diagnosing the Individual with MDD, the Psychologist recommended that he (1) attend therapy to decrease depressions and develop coping skills to manage suicidal ideation; (2) continue weekly, individual therapy for at least two years; (3) obtain a second opinion from a psychiatrist; and (4) continue to comply with his psychiatrist’s treatment recommendations. *Id.* at 39.

The Therapist testified that he has been providing weekly individual, integrated psychotherapy to the Individual since early 2021. Tr. at 16, 17, 18. The Therapist testified that the Individual is motivated and committed, and he described the Individual’s attendance as exemplary. *Id.* at 16-17. The treatment focuses on making sure the Individual is safe for himself, his family, and his job. *Id.* at 17. It involves a variety of techniques that include self-empathy, ego strengthening, and working on a variety of mental and physical coping skills. *Id.* at 18-20. The Therapist testified to

observing significant progress in the Individual's ability to use cognitive coping skills. *Id.* at 42. The treatment also addresses the Individual's marriage, including joint treatment sessions with the Individual's wife. *Id.* at 22.

The Therapist testified that the Individual reported having an instance of suicidal thoughts in the summer of 2021. *Id.* The Individual reported taking positive actions to successfully address the thoughts, including taking a walk, calling people, and employing the tools he developed in treatment. *Id.* at 35. The Therapist also reported that the Individual is currently attending two therapy groups. *Id.* at 24. Finally, the Therapist testified that the Individual's prognosis is "very good[]" and very strong." *Id.* at 39.

The Individual testified that, leading up to his hospitalization, he had been under a lot of stress balancing his difficult workload, his participation in a demanding graduate degree program funded by his employer, and marriage difficulties. *Id.* at 51-54, 56, 58-59. At the time, he attempted to cope with the pressure by increasing his focus on his work and studies. *Id.* at 61. On the night of his hospitalization, he had argued with his wife and experienced extreme guilt and shame, which led to thoughts of suicide. *Id.* at 62. He told his wife about his thoughts, and she encouraged him to contact his psychiatrist. *Id.* 62-63.

The Individual testified that he began receiving treatment from a different psychiatrist after being evaluated by the Psychologist. *Id.* at 80. He testified that his current medication significantly contributed to his improvement, and he stated he is willing to continue it indefinitely. *Id.* at 68-69. He explained, in contrast, that he had not been sure about the effectiveness of his pre-hospitalization medication. *Id.* at 68. Regarding his treatment progress, the Individual testified that he recognized that his priorities were way out of line. *Id.* at 70-71. He has been putting effort into his recovery and his relationship, and he has established "firm boundaries" for himself and his work. *Id.* at 70-71. The Individual is currently separated from his wife. *Id.* at 66. He sees her weekly, and he believes they are "connecting on a much deeper level" and that they are "much happier." *Id.* at 75. He also withdrew from his graduate program. *Id.* at 72. Lastly, he described successfully using coping mechanisms when engaging with his wife and work colleagues. *Id.* at 75-76. He testified that he views his therapeutic and psychiatric treatment as a lifelong commitment. *Id.* at 81.

The Psychologist testified that the Individual had met a lot of the goals set forth in her recommendations. *Id.* at 96. She further testified that she no longer had any concerns regarding his stability or lack of reliability due to his past difficulty managing "his suicidal ideation or the intensity or severity of his depression." *Id.* at 96. She noted significant changes in both his insight and behavior since the initial evaluation. *Id.* She explained that the severity and symptoms of his depression had been adequately addressed by his treatment. *Id.* at 98. She concluded by stating that the Individual had rehabilitated and reformed his psychological condition. *Id.* at 97. She testified that the Individual has a low likelihood of entering a state of crisis that requires acute care. *Id.* at 100.

V. ANALYSIS

A. Guideline I Considerations

Under Guideline I, the following relevant conditions could mitigate security concerns derived from a psychological condition:

- (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;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation[.]

Adjudicative Guidelines at ¶ 29.³

I find that the above conditions apply to resolve the Guideline I security concerns. Turning first to ¶ 29(a), the testimony and conclusions of the Therapist and Psychologist establish that the Individual's psychological condition is readily controllable with treatment. There is also ample evidence that the Individual has consistently complied with the treatment recommendations of both the Therapist and his psychiatrist, and he has successfully utilized the treatment and coping skills to significantly improve his condition. Next, under ¶ 29(b), the record demonstrates that the Individual voluntarily entered a counseling and treatment program consistent with the Psychologist's recommendations. The record also demonstrates that both the Therapist and Psychologist gave the Individual a positive prognosis, which establishes that his condition is amenable to treatment and that he received a favorable prognosis from a qualified medical health professional. Finally, under ¶ 29(c), the preceding information, coupled with the Psychologist's conclusion, establishes that the Individual's condition has a low probability of recurrence. Accordingly, I find that the Individual has resolved the Guideline I security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised a security concern under Guideline I of the Adjudicative 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be restored.

³ The additional mitigating Guideline I factors are not applicable to these facts.

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