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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: December 17, 2021) Case No.: PSH-22-0031
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Issued: March 10, 2022

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. On January 26, 2021, the Individual completed a Questionnaire for National Security Positions (QNSP) in connection with seeking a security clearance. Ex. 7 at 51. The Individual disclosed on the QNSP that he was receiving treatment for Bipolar II Disorder. *Id.* at 42–43.

A DOE-contracted psychologist (DOE Psychologist) conducted a clinical interview of the Individual on June 22, 2021. Ex. 5 at 3. On June 29, 2021, the DOE Psychologist issued a Psychological Assessment (Report) in which he determined that the Individual met the diagnostic criteria for Bipolar II Disorder, Depressed, with moderate severity, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 8.

The local security office (LSO) issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a

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.

security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted seven exhibits (Ex. 1–7). The Individual submitted thirty exhibits (AA–BD). The Individual testified on his own behalf and offered the testimony of his girlfriend (the “Girlfriend”) and a friend (the “Friend”). Hearing Transcript (Tr.) at 3. The LSO offered the testimony of the DOE Psychologist. *Id.*

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline I (Psychological Conditions) as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist’s determination that the Individual met the diagnostic criteria for Bipolar II Disorder under the *DSM-5* and his opinion that this condition could impair the Individual’s judgment, stability, reliability, or trustworthiness. Ex. 1. The opinion by a duly qualified mental health professional that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I. Adjudicative Guidelines at ¶ 28(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 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 Dep’t 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 February 2020, the Individual consulted with a medical provider at the university at which he was enrolled for symptoms of depression. Ex. AB at 1; Ex. AG. He was prescribed an antidepressant. Ex. AB at 10. After he began using the antidepressant, he did not want to leave his bed due to feelings of depression, cut his legs “as a way of feeling something and [to] take out anger at himself,” and experienced suicidal ideation. Ex. 7 at 87. The Individual shared his suicidal ideations with his Girlfriend, who also observed his self-inflicted cuts, and she urged him to seek help from a medical professional. Tr. at 59, 61–62, 66.

On October 16, 2020, the Individual consulted with a psychiatrist (Individual’s Psychiatrist) concerning his symptoms. *Id.* at 86; Ex. AC at 1. The Individual’s Psychiatrist diagnosed him with Bipolar II Disorder and prescribed him Lamotrigine. Ex. 7 at 86–87; Ex. AC at 1. The Individual’s Psychiatrist indicated that antidepressants cause “hypomanic episodes” in persons with Bipolar II Disorder and that the Individual’s self-harm could have been the product of a hypomanic episode. Ex. AD at 1. The Individual shared his diagnosis with his Girlfriend and his Friend. Tr. at 13–14, 35–36.

The Individual signed and submitted the QNSP on January 6, 2021. Ex. 7 at 51. The Individual disclosed on the QNSP that he had been diagnosed with Bipolar II Disorder and was receiving treatment. *Id.* at 42–43.

The DOE Psychologist conducted a clinical interview of the Individual on June 22, 2021. Ex. 5 at 3. During the clinical interview, the Individual indicated that he had experienced feelings of depression and suicidal ideation in early 2020. *Id.* at 4. He admitted that he experienced a hypomanic episode, which included “deadened” emotionality and increased energy, after taking the prescribed antidepressant. *Id.* at 3–4. On June 29, 2021, the DOE Psychologist issued his Report. *Id.* at 8. The DOE Psychologist opined that the Individual met the diagnostic criteria for Bipolar II Disorder, Depressed, with Moderate Severity, under the *DSM-5*. *Id.* at 7–8. The DOE Psychologist recommended that the Individual receive treatment from a psychiatrist and for that psychiatrist to attest to the Individual’s stability, absence of hypomanic episodes, and medication compliance for at least twelve months. *Id.* at 8. The DOE Psychologist also suggested that the Individual obtain psychotherapy from a clinical psychologist or psychiatrist focused on self-improvement, self-awareness, and acceptance of his condition for at least three months. *Id.*

In March 2021, the Individual’s Psychiatrist and the Individual identified a Lamotrigine dosage which best managed the Individual’s condition. Ex. AC at 1–19; Tr. at 73. The Individual has adhered to this medication regimen since then. Tr. at 73–74; *see also* Ex. AC at 25–26 (demonstrating that the Individual has filled each prescription). The Friend testified to the Individual’s use of pill organizers and the Individual’s storing of medication in his travel bag and vehicle to ensure he does not miss a dose. Tr. at 23. The Individual’s Girlfriend testified that the Individual uses a medication-tracking application on his phone to ensure that he adheres to his medication schedule and has shared his data with an application on her phone so that she can monitor his compliance. *Id.* at 39.

The Individual met with a Licensed Clinical Social Worker (LCSW) for thirty-two psychotherapy sessions from March 2020 to February 2022. *Id.* at 83; Ex. AK at 4. The Individual's therapy with the LCSW helped him to overcome stigma associated with his diagnosis and accept the diagnosis without allowing it to "define" him as a person. Tr. at 106–07. The LCSW opined that the Individual demonstrated "noteworthy" honesty and integrity compared to other patients, had responded "extremely well" to treatment, and was likely to seek help if he experienced negative symptoms in the future. Ex. AK at 6. To comply with the DOE Psychologist's recommendation that he pursue therapy with a psychologist, and at the recommendation of the Individual's Psychiatrist, the Individual recently began treatment with a psychologist specializing in patients with mood disorders. Tr. at 80, 108; *see also* Ex. AJ (showing that the Individual met with a psychologist on February 7, 2022).

The Individual has experienced improved energy and an absence of symptoms since beginning his current medication regimen in March 2021, and has not experienced urges to self-harm since discontinuing the use of antidepressants. Tr. at 110, 112–13. The Individual also testified that he would contact the Individual's Psychiatrist if he perceived that his medication was not effectively managing his condition. *Id.* The Friend observed that the Individual appeared happier since undergoing treatment and had not shown signs of a depressive episode for over one year prior to the hearing. *Id.* at 17, 21. The Friend would encourage the Individual to consult with a medical practitioner, and notify the Individual's Girlfriend and parents, if he observed the Individual displaying signs of mania or depression. *Id.* at 23–24. The Individual's Girlfriend observed the Individual demonstrated more energy, positivity, and proficiency in communicating his feelings after undergoing treatment, and has not demonstrated manic or depressive behaviors since October 2020. *Id.* at 42, 57–58. The Individual's Girlfriend would encourage the Individual to seek professional assistance or contact his mental health practitioners herself if she observed symptoms of mania or depression in the Individual. *Id.* at 43. The Individual's Psychiatrist believes that the Individual is adhering to his medication regimen, has not experienced a hypomanic episode since October 2020, and has been stable since adopting his current medication regimen in March 2021. Ex. AF at 1.

At the hearing, the DOE Psychologist indicated that Bipolar II Disorder is a permanent condition that would require lifelong management. Tr. at 124–25, 127. He indicated that the Individual had substantially complied with his treatment recommendations, the treatment had stabilized the Individual's condition, and that his Bipolar II Disorder was in remission. *Id.* at 125–26. The DOE Psychologist stated that the symptoms of Bipolar II Disorder can generally be controlled with medication, provided that the condition is closely monitored, and that the prevalence of clinically significant hypomanic and depressive episodes in patients with Bipolar II Disorder who adhere to their medication regimens was "very low." *Id.* at 131–33. The DOE Psychologist opined that the Individual's prior self-harm did not pose a significant risk because it was the product of a hypomanic episode, and that the Individual's medication regimen significantly reduced the probability of such an event occurring in the future. *Id.* at 130. He further opined that the Individual's prognosis remained fair based on the possibility that hypothetical future life events, such as marriage, children, or relocation, could impact the management of the Individual's condition. *Id.* at 126–27, 133–34.

V. ANALYSIS

The Individual's diagnosis with Bipolar II Disorder, and the DOE Psychologist's opinion in his Report that this condition may impair judgment, stability, reliability, or trustworthiness, raises security concerns under Guideline I. Adjudicative Guidelines at ¶ 28(b). The Individual asserted that the security concerns were mitigated because his condition was controllable with treatment, and he had successfully complied with treatment recommendations for over one year. Tr. at 8.

An individual can mitigate security concerns under Guideline I if:

- (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) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; or,
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29(a)–(e).²

The DOE Psychologist opined that Bipolar II Disorder is controllable with treatment and that the prevalence of clinically significant hypomanic and depressive episodes among patients who adhere to their medication regimens is “very low.” The Individual offered substantial documentation, as well as corroborating witness testimony and a letter from the Individual's Psychiatrist, to demonstrate that he has adhered to the medication regimen established in March 2021 and has not experienced any hypomanic or depressive episodes since beginning the medication regimen. For these reasons, I find that the Individual has satisfied the first mitigating condition under Guideline I. *Id.* at ¶ 29(a).

The DOE Psychologist also opined that the Individual is stable, his Bipolar II Disorder is in remission, the condition does not currently impair his judgment, reliability, or trustworthiness, and that he has a low risk of hypomanic or depressive episodes so long as he adheres to his medication regimen.³ For these reasons, I find that the Individual has satisfied the third mitigating condition under Guideline I. *Id.* at ¶ 29(c).

² The second mitigating condition is not applicable in this case because the one-page letter from the Individual's Psychiatrist is insufficient for me to conclude that the Individual has received an unqualified favorable prognosis. Adjudicative Guidelines at ¶ 29(b). The fourth and fifth mitigating conditions are inapplicable because Bipolar II Disorder is not a temporary condition. *Id.* at ¶ 29(d)–(e).

³ Although the DOE Psychologist opined that the Individual's prognosis was only “fair,” I nonetheless find that the Individual has satisfied this mitigating condition. Balanced against this assessment is the DOE Psychologist's own

The Individual is stable, has demonstrated exceptional compliance with his medication regimen, only experienced a hypomanic episode as a side effect of antidepressants he was prescribed before he was diagnosed with Bipolar II Disorder, has not experienced any hypomanic or depressive episodes for over one year, and has established effective personal and medical networks to support his continued stability. For these reasons, I find that the Individual has 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 to raise security concerns under Guideline I of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all 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 should be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals

testimony that the risk of a person experiencing a clinically significant hypomanic or depressive episode was “very low” if the person adhered to his medication regimen. The record indicates that the Individual has demonstrated significant stability and adherence to his medication regimen. Consequently, after considering all of the evidence before me, I find that third mitigation condition under Guideline I nonetheless applies in the present case.