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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: January 10, 2022	)	Case No.: PSH-22-0066
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Issued: June 28, 2022

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 and Special Nuclear Material.”<sup>1</sup> 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**

A Local Security Office (LSO) obtained derogatory information indicating that the Individual was hospitalized on June 2, 2021, after threatening to commit suicide while holding a loaded firearm in the presence of her minor daughter. The LSO requested that she undergo an evaluation by a DOE-contracted Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on October 22, 2021. Exhibit (Ex.) 9 at 7, 18-19. In addition to conducting the CI, the Psychologist reviewed the treatment records from the facilities at which the Individual had been hospitalized and treated, and contacted the Individual’s psychotherapist, a licensed clinical social worker (LCSW) who had been treating the Individual since July 13, 2021, to discuss the LCSW’s impressions of the Individual’s diagnosis, treatment, and prognosis.<sup>2</sup> Ex. 9 at 5.

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<sup>1</sup> 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.

<sup>2</sup> In addition to interviewing the Individual and the LCSW, the Psychologist reviewed the Individual’s personnel security file and provided for the administration of a standardized psychological assessment, the Minnesota Multiphasic Personality Inventory 2-RF (MMPI). Ex. 9 at 2.

After considering this information, the Psychologist issued a report on November 9, 2022, in which she concluded that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) for Unspecified Personality Disorder (UPD), Unspecified Depressive Disorder (UDO), and Adjustment Disorder With Mixed Disturbance of Emotions and Conduct (AD) which the Psychologist concluded had impaired the Individual’s judgment, reliability, stability, and trustworthiness. Ex. 9 at 8-9. In reaching this conclusion, the Psychologist noted, “When [the Individual] has become overwhelmed by her emotions, whether they be depressed or angry or fueled by fears of abandonment, she has demonstrated a lack of ability to modulate them, and has acted impulsively, aggressively, and in a manner potentially very dangerous to herself and harmful to others.” Ex. 9 at 8.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that her security clearance was suspended and that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her 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), I took testimony from six witnesses: the Individual, her coworker (the Coworker), her former manager (the Manager), a coworker and close friend (the Friend), a Licensed Clinical Social Worker (the LCSW) and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0066 (hereinafter cited as “Tr.”). The LSO submitted eleven exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted 5 exhibits, marked as Exhibits A through E.

The Individual’s Exhibits A, B, and C each pertain to her work performance rather than the specific issues at bar. 10 C.F.R. § 710.27(b) specifically forbids me from considering “the possible adverse impact of the loss of the individual's access authorization upon the DOE program in which the individual works.” Moreover, while the Individual’s excellent work history reflects positively upon her work ethic, her talent, and her character, it does not address the mental health concerns at issue in the present case which have nothing to do with her work ethic, her talent, and her character.

Exhibits D and E are court orders dated July 9, 2021, and November 18, 2021, granting a divorce to the Individual and awarding her joint custody of her children.

## **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 substantial doubt concerning her eligibility for a security clearance. In support of this determination, the LSO cited Adjudicative Guideline I. Under Adjudicative Guideline I (Psychological Conditions), the LSO cites the Psychologist’s conclusion that the Individual met the criteria set forth in DSM-5 for UPD, UDO, and AD which the Psychologist concluded have impaired the Individual’s judgment, reliability, stability, and trustworthiness. These allegations adequately justify the LSO’s invocation of Guideline I. The Adjudicative Guidelines state: “[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. Among those conditions set forth

in the Guidelines that could raise a disqualifying security concern is “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness.” 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 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.

### **IV. Hearing Testimony**

At the hearing, the Individual submitted the testimony of five witnesses, including herself, to show that she had successfully mitigated the security concerns raised under Guideline I by obtaining effective mental health treatment.

The Friend testified that he and the Individual have been coworkers since 2013. Tr. at 15. The Individual stayed with him after she was released from the hospitalization resulting from the June 2021 incident. Tr. at 16. He testified that he helped her with the process of obtaining a new residence and transportation as well as addressing the legal and financial issues arising from her divorce. Tr. at 17-18. The Friend testified that the Individual has made significant progress since the June 2021 incident, and after her divorce, has a new life. Tr. at 18-19. The Friend opined that the Individual has learned to face adversity with a more rational approach and is a calmer person. Tr. at 19-20. He further opined that the Individual is now more assertive and decisive. Tr. at 20. According to the Friend, her judgment is now “flawless” and “excellent.” Tr. at 20. He noted that the Individual has always been stable at the workplace and never let her problems from home affect her work. Tr. at 20-21. The Friend considers the Individual to be completely trustworthy and reliable. Tr. at 21. The Friend concluded his direct testimony by stating:

Initially a year ago I would have had similar concerns as DOE has had at that point. She was not in a stable situation. I think with the help of her counselor and myself and some of her other close friends -- I think she's progressed to the point now where I have no concerns at all.

Tr. at 22. On cross examination, the Friend testified that the Individual told him that her counseling had made her more "stable" which is consistent with his observation. Tr. at 23-24. She now handles conflict with her ex-husband more calmly and effectively. Tr. at 24-25.

The Coworker testified that she was aware of the June 2021 incident. Tr. at 31. She provided support and information to the Individual while she was going through her divorce. Tr. at 33. She testified that the Individual had been receiving counseling and was now more "happy," "lighthearted," and "centered." Tr. at 33-34. The Individual is now less "discouraged" and "stressed." Tr. at 34, 37.

The Manager testified that she has worked with the Individual for six years and had managed the Individual from December 2020 until June 2021. Tr. at 44. She is aware of the June 2021 incident and the Individual's hospitalization. Tr. at 44-45. She testified that she always thought highly of the Individual's judgment, stability, trustworthiness, and reliability in the workplace. Tr. at 47-48.

The LCSW essentially agreed with the conclusions of the Psychologist at the time that the Report was issued, however, the LCSW stated that she no longer sees the traits in the Individual which had led her to conclude that the Individual met the criteria for UPD. Tr. at 56-58. The LCSW testified that she has met with the Individual on 38 occasions for one hour each, starting on July 13, 2021. Tr. at 54. Because of the Individual's progress in therapy, they now meet on a biweekly basis instead of weekly. Tr. at 54-55. The LCSW opined that the Individual is doing "really well," and that the Individual has been "very motivated" and "very committed" to "changing her emotion regulation and patterns of behavior." Tr. at 55. The Individual has also developed an awareness of how she can manage her emotions. Tr. at 55. The LCSW noted that, since the Individual's separation and divorce, she has had to navigate difficult and emotionally charged situations with her ex-husband. Tr. at 55. The LCSW stated that the Individual has become "more aware of how her emotions were affecting her behavior and what emotions she was having and what would make things worse. And so she's developed a greater self-awareness of her emotional distress as well as developed coping skills to manage them and challenge the thoughts that ensue." Tr. at 55, 61. She now "has an increased ability to step back and determine what would be a mindful, effective process moving forward that has better consequences and better outcome." Tr. at 58, 61. The LCSW further stated that the Individual has developed the self-awareness to reach out to others for support and has built a support network. Tr. at 64-65. According to the LCSW, the Individual is now "regularly demonstrating and expressing effective coping mechanisms and strategies for handling stressful situations." Tr. at 67. The Individual has complied with her treatment plan. Tr. at 57, 61-62. The Individual was recently able to navigate the end of a new romantic relationship in an appropriate and healthy fashion. Tr. at 58-60. The LCSW testified that the Individual no longer exhibits indications of emotional instability and no longer has an emotional, mental or personality condition that can impair her judgment, stability, reliability, or trustworthiness. Tr. at 60-62. The Individual has not had suicidal thoughts or ideation since she left the hospital in June 2021. Tr. at 57. The LCSW further testified that the Individual has been

able to regulate herself when faced with significant stressors such as her recent break-up and some emotionally distressing situations with her ex-husband. Tr. at 64. The Individual has made significant progress and “has been able to confidently manage stressors in her life without excessive conflict or dysregulation or problem behaviors.” Tr. at 67.

The Individual testified that she had never had a mental health incident prior to June 1, 2021. Tr. at 95. In addition to the individual counseling that she has been receiving from the LCSW, the Individual had been treated at a hospital because of the June 1, 2021, incident. Tr. at 96. She continued to attend follow-up appointments with the hospital’s psychiatric staff to monitor her progress and medication. Tr. at 96. The Individual has been treated with an anti-depressant. Tr. at 97. Because of the Individual’s progress, the psychiatric staff recently decided to discontinue her medication and her follow-up appointments. Tr. at 97-98, 107. The Individual testified that her divorce was “extremely stressful.” Tr. at 100. However, the finalization of the divorce has relieved a lot of that stress and made all the members of her family happier. Tr. at 100. She shares custody of her children with her ex-spouse. Tr. at 101. The Individual testified that through counseling “I’ve been able to learn skill sets to really help me be more aware of my feelings, be able to accept them and acknowledge them and be able to focus more on the facts than whatever emotion I may be feeling to have an end result where it’s more efficient to reach whatever long-term goal I’m trying to achieve.” Tr. at 102. She further testified that, when faced with an emotionally charged situation:

I immediately take a breath, and, I mean, it’s that breath of me following it through the entire passageway of the nose, inhale and exhale, that really allows me to put my focus on stuff that actually needs to be focused on. And so, I mean, that first initial breath is extremely important. It makes me focus on what needs to actually come out of this. . . . I continue to do the breathing for a couple of minutes, just to really focus on it and calm myself, and then I start looking at the facts of the situation, looking at what is exactly going on. I acknowledge, you know, what emotion I’m feeling. If I’m upset, okay, I’m upset. But it’s – it’s really focusing on the facts to be more in that wise mind state and get myself away from those emotional states that really causes me to get out of control.

Tr. at 102. She further testified that she was able to use the skills and knowledge she obtained from counseling to navigate a recent break up with a new boyfriend. Tr. at 104-105. She is learning relaxation techniques from the LCSW. Tr. at 108-109.

The Psychologist testified that after observing the testimony provided by the other five witnesses, she believes that the Individual no longer has an emotional, mental or personality condition that can impair her judgment, stability, reliability, or trustworthiness. Tr. at 116. She noted that the Individual’s stressors have diminished and that the Individual’s psychiatrists concluded that she no longer needs medication. Tr. at 117. The Psychologist further testified that, because of her therapy, the Individual has learned to regulate and manage her symptoms and has skills in place to avoid repeating the behaviors that led to her hospitalization. Tr. at 117. She opined that the Individual’s prognosis is “good.” Tr. at 121.

## V. Analysis

The Individual does not dispute that she has been properly diagnosed with UPD, UDO, and AD, instead contending that she has sufficiently mitigated the security concerns raised by those diagnoses. The testimony of the Friend, the Individual, the LCSW, and the Psychologist have convinced me that the Individual has fully mitigated the security concerns raised under Guideline I. As discussed above, the Individual has shown that she is currently receiving counseling and treatment for her UPD, UDO, and AD, and that that treatment has been effective. Moreover, two mental health professionals, including the DOE's own expert, the Psychologist, both testified that the Individual's prognosis for these disorders is "good," and that her disorders are not currently affecting her judgment, reliability, or trustworthiness, and are unlikely to do so in the future.

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline I 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," or there is a "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(b) and (c). The record clearly indicates that the Individual is currently receiving counseling or treatment with a favorable prognosis by two duly qualified mental health professionals (the LCSW and the Psychologist). At the hearing, the Psychologist, a duly qualified mental health professional contracted by the U.S. Government testified that the Individual's conditions are under control or in remission and have a low probability of recurrence or exacerbation.

Accordingly, I find that the Individual has provided adequate evidence of rehabilitation or reformation to mitigate and resolve the security concerns raised under Guideline I.

## V. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline I. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline I. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals