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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: July 19, 2022 ) Case No.: PSH-22-0122  
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Issued: November 29, 2022

**Administrative Judge Decision**

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 and Special Nuclear Material.”<sup>1</sup> 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 that he hold a security clearance. The Individual reported his diagnosed medical condition, bipolar disorder II, on his Questionnaire for National Security Positions. Exhibit (Ex. 5) at 1. He was evaluated by a DOE-contracted psychologist (the Psychologist), who characterized the Individual’s condition as in full remission with a guarded prognosis for continued mood stability. Ex. 9 at 10. 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 Psychologist. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9. The Individual submitted two exhibits, marked as Exhibits A and B.

<sup>1</sup> Under the regulations, “[a]ccess 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. 10 C.F.R. § 710.7.

Guideline I states that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. Conditions that may cause a security concern include:

- (a) Behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) An opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
- (c) Voluntary or involuntary inpatient hospitalization;
- (d) Failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions; and
- (e) Pathological gambling, the associated behaviors of which may include unsuccessful attempts to stop gambling; gambling for increasingly higher stakes, usually in an attempt to cover losses; concealing gambling losses; borrowing or stealing money to fund gambling or pay gambling debts; and family conflict resulting from gambling.

*Id.* at ¶ 28.

The LSO alleges that, in April 2022, the Psychologist diagnosed the Individual with bipolar disorder II. 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**

The Individual's wife testified that she has known the Individual for about 14 years, that she and the Individual have been married for about four years. Tr. at 13. When they were in their 20s, she became aware of the Individual's mental health issues when he started expressing feelings of depression and lack of motivation. *Id.* She testified that, at that time, the Individual saw a doctor and was diagnosed with depression. *Id.* at 15. She testified that he began medication at that time, but it was not helping. *Id.* The wife stated that the Individual had been consuming alcohol heavily at that time but had been abstinent from alcohol for nearly four years by the hearing date. *Id.* She believed that the Individual was first diagnosed with bipolar disorder II in 2018. *Id.* at 15–16. The wife testified that the Individual began taking medication and attending weekly counseling sessions after being diagnosed with bipolar disorder II. *Id.* at 16.

The Individual's wife testified that the Individual's mood had been positively impacted by his medication and that his mood had been stable since he began treatment for his mental health condition. Tr. at 17–19. If the medication was causing unacceptable side effects or had become ineffective, the Individual would have the medication switched. *Id.* at 19. She testified that the Individual had never stopped taking medication on his own and that she would notice if he did. *Id.* at 25, 35. She testified that the Individual's mood swings were generally noticeable before he began medication treatments. *Id.* at 20. She believed that she could still tell if the Individual was having an episode because she knew him so well, but that those symptoms were very minor. *Id.* She

testified that when the Individual was having an episode, he would get quiet. *Id.* at 21. She believed the Individual had become adept at verbalizing his needs from the outset of episode symptoms and had multiple coping mechanisms, including meditation, spending time in nature, and spending time with his pets. *Id.* at 21. She testified that the Individual was able to identify when he was having an episode and communicate that with her. *Id.* at 24, 35. She stated that episodes typically presented in an “on and off” manner over a period of 24 to 48 hours. *Id.* at 24–25. The Individual’s wife further added that the Individual had been attending therapy consistently for the preceding four years. *Id.* at 22–23. She testified that the Individual had recently switched counselors because it had been a bad fit. *Id.* at 23. He had seen his new therapist multiple times in the month preceding the hearing and told his wife that he liked the therapist and her approach. *Id.* at 23–24. She believed the new therapist was effective and described the Individual as “lighter and just overall happier.” *Id.* at 25–26.

The Individual’s wife described the Individual’s behavior when they were in conflict, stating that the Individual “will wait and listen, and sometimes he’ll say ..., ‘I need a minute to kind of digest what’s going on.’ And ... he’ll step out, or he’ll go for a walk and then come back, and we can discuss things. But he’s really patient.” Tr. at 27–28. She had not witnessed the Individual have emotional outbursts or periods of excessive spending. *Id.* Before the Individual began treatment for his alcohol consumption, the wife was uncertain about their relationship because of the Individual’s behavior but decided to see how treatment went before deciding whether to leave. *Id.* at 30–31. She became an active participant in the Individual’s recovery and mental health treatment and observed the Individual taking his treatment very seriously. *Id.* at 31. She stated that the Individual was dependable and that “even when he’s at his worst, ... [he knows] how to get help and how to ask for help...” *Id.* The Individual’s wife believed the Individual was still actively engaged in his alcohol recovery in addition to his ongoing mental health treatment. *Id.* at 33.

The Individual’s wife testified that the Individual does not experience manic episodes. Tr. at 34. She testified that, when the Individual was experiencing a depressive episode, he was able to conduct himself within a normal range of behavior. *Id.* The Individual’s wife testified that she is a part of the Individual’s support system and will hold him accountable if he exhibits behaviors outside of what would normally be expected, just as she already had done before the Individual began treatment. *Id.* at 27, 31.

The Individual’s father-in-law has known the Individual since the Individual started dating his daughter. Tr. at 38. The Individual and his wife had been living with the father-in-law for three years by the time of the hearing. *Id.* at 39. The father-in-law had also been the Individual’s direct supervisor at work for about four years, starting about nine years before the time of the hearing. *Id.* at 43–44. He described the Individual as very steady at work and had observed the Individual having good relationships with his colleagues. *Id.* at 45–46. He had no concerns with the Individual’s trustworthiness or reliability at work and stated that the Individual “was really solid.” *Id.* at 46.

The father-in-law did not believe he had seen the Individual in a depressive state but stated that the Individual seemed happier than he was five years earlier. Tr. at 47. He believed that the Individual had “blossomed ... as a person” and become “outgoing and happy” particularly since becoming a

parent.<sup>2</sup> *Id.* at 48. He was unaware of any diagnosis the Individual may have had and was not aware of the Individual taking any medications. *Id.* He was aware that the Individual had participated in group and individual therapy. *Id.* He was also aware that the Individual had dealt with mental health challenges, but stated, “I can tell you he’s—he’s a solid, solid, guy and he’s an honest guy, and he’s very dedicated, and I would have full confidence in his integrity as a—as a person.” *Id.* at 49.

In his testimony, the Individual stated that he believed, in retrospect, that he first developed symptoms of a psychological condition in his 20s but was unaware of what it was at the time. *Tr.* at 51. He recalled having mood fluctuations during that time that he now recognized as symptoms of bipolar disorder II. *Id.* at 53–54. Having a diagnosis allowed the Individual to detach somewhat from his symptoms, regarding them as part of his condition, rather than indications that he was a “bad person.” *Id.* at 54. He first started medication and therapy at age 23 when he was diagnosed with general depression and anxiety; that treatment continued for six years. *Id.* at 55. The Individual’s therapist had asked him if he thought he might have bipolar disorder, but the Individual was never diagnosed with it until after starting alcohol treatment. *Id.* at 56. The Individual and his current wife, then girlfriend, had been attending couples counseling and the therapist brought up bipolar disorder, so the Individual went to a psychiatrist and, at that point, was diagnosed with bipolar disorder. *Id.* at 57–58. He began seeing a psychiatrist regularly after receiving his diagnosis. *Id.* at 59. It took time for the Individual and his psychiatrist to find a combination of medications that was effective, but they did eventually find such a combination. *Id.* at 59. About three months before the hearing, another medication was added that further improved the Individual’s mood and stability; though they had not settled on the most effective dose, the medication had already proved valuable for the Individual at the levels previously tried. *Id.* at 60. The Individual testified that he remained open to changes in his medication his psychiatrist might recommend in the future. *Id.* at 61.

After about two years of treatment, the Individual’s psychiatrist moved to a different practice. *Tr.* at 64. Shortly after that, the Individual was married and went on a honeymoon, the COVID-19 pandemic began, and the Individual’s daughter was born. *Id.* at 64–65. The Individual testified that he was doing well on his medications, which he kept refilling, and did not prioritize seeking a new psychiatrist until the summer of 2021. He began seeing his current psychiatrist in September 2021, initially seeing her every other month, then increasing his visits to every month when he started his newest medication. *Id.* at 65–66; *Ex. A.* The Individual had also established care with a new therapist and had a second appointment scheduled for later in the week. *Id.* at 70. He intended to continue therapy for at least another year, per the Psychologist’s recommendation,<sup>3</sup> and likely longer if the initial year went well. *Id.* at 70–71. He preferred his current therapist’s method of communication to that of his previous therapist; he had found it difficult to open up to his previous therapist. *Id.* at 71; *see also id.* at 23, 65. The Individual testified that he did not participate in therapy until about three months before the hearing because he could not afford it, but when he started his current position, he made enough money to cover the cost of therapy, which is about \$180 per month under his insurance plan. *Id.* at 72, 77. The Individual considered his medications

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<sup>2</sup> The Individual’s child was referred to as a baby multiple times throughout the hearing and was likely no more than two years old at the time.

<sup>3</sup> The Psychologist recommended in her report that the Individual participate in psychotherapy and meet with a psychiatrist for a minimum of 12 months. *Ex. 7* at 10.

to be a necessity, similar to insulin for a diabetic, and would continue to take them regardless of his financial situation in the future. *Id.* at 92–93.

The Individual confirmed that he had told the Psychologist in his evaluation that he would have an “episode” about every three months, but clarified that, for him, “episode” meant a gradual transition that he would not have realized was a symptom of a condition if he was not educated on the topic. *Tr.* at 62. He used the term to talk about his self-awareness of symptom onset. *Id.* When the Individual experienced symptom onset, he would tell his wife so she would know what was going on with him. *Id.* His first-line coping mechanism was reassuring self-talk; he would remind himself that the symptoms would eventually stop and that he was able to manage until they did. *Id.* The symptom he experienced most frequently during an “episode” was difficulty concentrating, which caused the Individual to feel frustrated. *Id.* He would also have more energy than usual, which he would channel into positive outlets, such as creative projects or chess. *Id.* at 63. Other symptoms included racing thoughts, “really good mood,” and being more talkative than normal. *Id.* He testified that his symptoms would typically resolve in a day or so. *Id.* at 62.

The Individual testified that, since his March 2022 evaluation with the Psychologist, he had been very stable and any symptoms he experienced were mild. *Tr.* at 73. He testified that when he experienced symptoms, he was able to function as normal and had not needed to take any sick leave due to his bipolar disorder diagnosis. *Id.* at 74. He testified that he had no difficulty discerning reality while experiencing symptoms and that, while unpleasant, “episodes” did not change his thinking or his decision-making. *Id.* at 80–81. The Individual had not told his colleagues about his diagnosis but testified that he simply had a preference for privacy and would not be overly bothered if they were to find out. *Id.* at 86. He cited as an example that his father-in-law had not known about his diagnosis before the hearing but he was not upset that his father-in-law had learned his specific diagnosis through being questioned as a witness. *Id.*

The Psychologist testified that her primary concern when evaluating the Individual was that he had appeared to have mild, transient suicidal ideations. *Tr.* at 103. She further testified that the Individual’s medication change was sufficient to mitigate that concern. *Id.* at 104. The Psychologist opined that the Individual’s bipolar disorder II was under control and in remission. *Id.* at 102, 109. She believed that the Individual’s dosage history of one of his medications showed that his symptoms were very stable. *Id.* at 104. She felt encouraged about the Individual’s ability to manage his mental health by both the wife’s testimony and the Individual’s self-awareness and initiative in seeking treatment. *Id.* at 104–05. She described the Individual as forthcoming, honest, and responsible. *Id.* at 105. She felt that the Individual had a strong prognosis and believed that the Individual’s bipolar disorder did not impair his judgment, stability, reliability, or trustworthiness. *Id.* at 107–08. She believed that there was a low probability that the Individual’s concerning symptoms would recur or be exacerbated. *Id.* at 109. She also believed that the Individual had demonstrated ongoing and consistent compliance with his treatment plan. *Id.*

## 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.

Conditions that could mitigate a security concerns under Guideline I include:

- (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;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

Mitigating factors (a), (b), and (c) apply in this case. As to factor (a), the Individual's bipolar disorder II is being treated by a number of drugs and therapeutic techniques and the Individual has substantially complied with his treatment plans for years. As to factor (b), the Individual sought out treatment long before receiving his current diagnosis, and once he had been diagnosed, the Individual actively worked with his psychiatrist to find an effective medication regimen and participated in therapy to the degree he was able to afford. The Psychologist gave him a favorable prognosis. As to factor (c), the Psychologist opined that the Individual's bipolar disorder II is under control or in remission and has a low probability of recurrence or exacerbation. In addition to these mitigating factors, I note that the Individual has demonstrated a commitment to maintaining his mental health regardless of whether his job requires a security clearance.

For the foregoing reasons, 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 access authorization 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.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals