

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: December 20, 2023) Case No.: PSH-24-0036
)
)
_____)

Issued: May 9, 2024

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 currently works for a DOE contractor, by which he was hired in December 2022. Exhibit (Ex.) 7 at 36;² Ex. 9 at 125. On December 18, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Ex. 9 at 118. In the QNSP, the Individual disclosed that he was diagnosed with Bipolar II Disorder in approximately April 2021. *Id.* at 110.

The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the information provided by the Individual. Ex. 6 at 22–32. In his response submitted on August 17, 2023, the Individual admitted experiencing symptoms associated with his Bipolar II diagnosis and to stopping treatment and medication without consulting with his healthcare provider. *Id.* at 28–29.

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.

² The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

On October 2, 2023, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 7 at 35. On October 11, 2023, the DOE Psychologist issued a report of the evaluation (Report) in which he opined that the Individual met sufficient criteria for a diagnosis of Bipolar II Disorder, most recent episode depressed, with rapid cycling, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*, and that this condition can impair his judgment, stability, reliability, or trustworthiness. *Id.* at 35, 39.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt concerning his eligibility for access authorization. Ex. 1 at 6. 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. *Id.* at 5.

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 nine exhibits (Exs. 1–9). The Individual submitted seven exhibits (Exs. A–G). The parties stipulated to the admission of each exhibit. The Individual testified on his own behalf. The LSO offered the testimony of the DOE Psychologist.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline I (Psychological Conditions) as the basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5. “Certain 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. The SSC cited the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of Bipolar II Disorder, most recent episode depressed, with rapid cycling, under the *DSM-5* and that this condition can impair his judgment, stability, reliability, or trustworthiness. Ex. 1 at 5. The LSO’s citation of the DOE Psychologist’s opinion that the Individual has a psychological condition that could 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 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 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) (strong presumption against the issuance of a security clearance).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *Id.* § 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

The Individual began experiencing depressive symptoms as a minor. Ex. 7 at 36. He began experiencing hypomanic symptoms, such as “elation, high energy, [and] less of a need for sleep or food,” while in college. Ex. 6 at 28; Ex. 7 at 36. In April 2021, he sought out mental health treatment with Cerebral, an online mental health platform. Ex. 6 at 26. In a short period of time, the Individual met numerous different psychiatrists via video conference. *Id.* at 38, 41 (reporting the Individual seeing four to five different psychiatrists); Ex. 9 at 127–28. One of the psychiatrists initially diagnosed the Individual with Major Depressive Disorder and prescribed him medication for that condition which the Individual found to be ineffective for managing his symptoms. Ex. 6 at 27; Tr. at 17, 28–30. His diagnosis was later corrected to Bipolar II Disorder. Ex. 6 at 27; Tr. at 17, 28–30. The Individual also reported seven different medications that were prescribed to him at varying dosages and times before late 2022. Ex. 6 at 28.

The Individual eventually stopped seeing the psychiatrists he met through Cerebral and discontinued his medication without supervision from a healthcare provider. *Id.* at 27; Ex. 7 at 41; Tr. at 31–32. The Individual expressed frustration regarding the lack of continuity of care through Cerebral. Ex. 7 at 41; Tr. at 29 (testifying that one of his biggest complaints was “how frequently [Cerebral] [was] changing the providers . . .” over “six or seven months . . .”). He also felt that the medications he was prescribed impacted his work, was skeptical of their effectiveness, and believed that “with the knowledge” of his “Bipolar [II] Disorder, [he] could accommodate [himself] . . .” Ex. 6 at 27. When asked in the LOI to provide a response as to how his Bipolar II Disorder had a “negative impact on [his] employment [and] professional life[.]” the Individual responded that he felt that “[t]he rapidly changing medication and dosages provided a much greater challenge . . .” *Id.* at 29. In particular, one prescribed sedative caused the Individual to sleep for over 14 hours. *Id.* The Individual expressed that his episodes became “notably less common than when [he] was on medication.” *Id.* at 30. He also expressed that he knows that he “always ha[s] the option of starting treatment again” if he were struggling. *Id.* at 29. From 2021 to 2023, the Individual attempted to manage his symptoms without medication. Ex. A at 3.

The Individual began employment for a DOE contractor sometime in December 2022. Ex. 7 at 36; Ex. 9 at 125. On December 18, 2022, the Individual signed and submitted the QNSP in connection with seeking access authorization. *Id.* at 118. The Individual disclosed on the QNSP his diagnosis,

his discontinuation of treatment without consulting a medical professional, and the fact he no longer received treatment. *Id.* at 110–11.

Thereafter, the LSO issued the Individual an LOI to which the Individual responded on August 17, 2023. Ex. 6 at 32. In his response to the LOI, the Individual acknowledged presently experiencing “hypomaniac” and “depressive” episodes at frequencies ranging from one to two times per month to one to two times across four months. *Id.* at 28. However, the Individual expressed his belief that his hypomaniac episodes increased his focus and productivity. *Id.* at 29. He noted that he had never had a psychotic episode. *Id.* The Individual also indicated that his condition had little impact on his personal life though he may become “a bit more irritable.” *Id.* He described his current mental health as “better than it has ever been” and reiterated that he had the “skills to identify when episodes were happening” and could accommodate them. *Id.*

Thereafter, on October 2, 2023, the Individual met with the DOE Psychologist for a psychological evaluation. Ex. 7 at 35. As part of the psychological evaluation, the DOE Psychologist conducted a clinical interview of the Individual; administered several psychological tests; and reviewed the Personnel Security File from DOE. *Id.* The results of the psychological testing were all within normal limits and did not provide clinically significant evidence of any psychological condition. *Id.* at 37–38. However, the DOE Psychologist noted that the Individual had acknowledged an approximate ten-year history of depression and an approximate three-to-four-year history of hypomania. *Id.* at 39. The cycles of depression and hypomania were untreated and even persisted within the last month of the examination. *Id.*

On October 11, 2023, the DOE Psychologist issued the Report in which he concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Bipolar II Disorder, most recent episode depressed, with rapid cycling, under the *DSM-5*. *Id.* at 39, 41.³ The DOE Psychologist noted the Individual’s “history of several years of depression and hypomania.” *Id.* at 41. Regarding the symptoms of hypomaniac episodes, the Individual admitted to episodically experiencing inflated self-esteem, needing only four to five hours of sleep, being more talkative, and engaging in increased goal-directed activity. *Id.* at 39–40. Regarding his symptoms of major depressive episodes, the Individual admitted to experiencing depressed moods that persisted throughout most of the day; markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day; sleeping up to 10 to 14 hours per day; at times just “lay[ing] [sic] there[;]” fatigue or loss of energy; on rare occasions, diminished ability to think or concentrate, or indecisiveness; and prior suicidal ideation, last present in the spring of 2022. *Id.* at 40. Furthermore, the Individual “reported consistent cycling when he is not on psychiatric medication.” *Id.* at 41.

The DOE Psychologist concluded that the Individual’s Bipolar II Disorder “denotes emotional instability considering the fact that he continues to cycle on a consistent basis.” *Id.* The DOE Psychologist recommended that the Individual see a psychiatrist in his community and receive an assessment for medication, treatment, and subsequent medication management. *Id.* The DOE Psychologist opined that the Individual’s prognosis would be “fair to good” with an assessment for medication and appropriate treatment. *Id.*

³ The DOE Psychologist included in his Report the diagnostic criteria for Bipolar II Disorder. *See* Ex. 7 at 41–43. A person must meet the criteria “for a current or past hypomaniac episode” and the criteria for a “current or past major depressive episode.” *Id.* at 41.

Between late November 2023 and early December 2023, the Individual sought treatment from a psychiatrist (Individual's Psychiatrist) and a psychotherapist ("Individual's Psychotherapist"). Ex. 2 at 10; Ex. A at 4; Ex. G at 1; Tr. at 36–37, 46. He began meeting with the Individual's Psychiatrist between "every three weeks to every month or so" and meeting with the Individual's Psychotherapist weekly. Tr. at 36–37, 46; *see also* Ex. A at 4.

The Individual's Psychiatrist prescribed him with Lamotrigine (25mg) in December 2023; varying amounts of Duloxetine from January 2024 to present; and Topiramate (25mg) from February 2024 to present. Ex. A at 4; Ex. F at 1; Ex. G at 1; Tr. at 41, 44. The Individual's symptoms have improved since resuming treatment. Ex. A at 4. The Individual has been compliant with his medications and confirmed that he planned on continuing to meet the Individual's Psychiatrist on a regular basis. *Id.* at 7; Ex. G at 1. During the hearing, the Individual described reaching out to the Individual's Psychiatrist regularly whenever he experienced notable symptoms of his Bipolar II Disorder. Tr. at 22–24. The two actively and regularly communicate about his medication regimen, and he specifically expressed, "if the [Individual's Psychiatrist] says to do it, then we're doing it" *Id.* at 60–61. The Individual's Psychiatrist indicated, via letter submitted to the record, that "[the Individual] has been compliant with his treatment plan, been timely to his sessions, and demonstrated integrity"—in addition to being "psychiatrically stable since the beginning of treatment" and "show[ing] good insight into his symptoms." Ex. G at 1; *see also* Ex. A at 7 (describing the Individual as "stable, honest, and cooperative . . ." based on the Individual's Psychiatrist's experience).

Regarding their weekly sessions, the Individual's Psychotherapist indicated that the Individual "consistently[] fully engaged in his therapy during sessions[] and complied with all therapy recommendations." Ex. A at 7. During the hearing, the Individual explained that he and the Individual's Psychotherapist would discuss "mitigating strategies" or how to logically think and work through stressors. Tr. at 46–47. The Individual has voiced his intent to continue participating in psychotherapy and medication management with the Individual's Psychiatrist. Ex. A at 7; *see also* Tr. at 44–45, 49 (answering "absolutely" when asked if he intended to "indefinite[ly]" engage with his Psychiatrist and medication management and testifying that he did not intend to stop seeing his Psychotherapist).

On February 5 and February 20, 2024, the Individual met with another psychologist (Individual's Consultant) for a psychological evaluation in connection with this proceeding. Ex. A at 1; *see also* Tr. at 51–52 (testifying that the Individual retained the Individual's Consultant for a forensic evaluation rather than treatment). The Individual's Consultant conducted a background interview and two structured clinical interviews; administered two psychological tests; reviewed a history and background questionnaire and records provided by the Individual; and consulted with the Individual's Psychotherapist and Psychiatrist. Ex. A at 1. Consistent with what was reported to the DOE Psychologist, the Individual provided background to the Individual's Consultant regarding the Individual's history and symptoms of depression and hypomanic episodes. *Id.* at 6–7. On February 26, 2024, the Individual's Consultant issued a report based on his assessment. *Id.* at 1.

In the report, the Individual's Consultant concluded that the Individual's background and the information gathered during the clinical interview supported his pre-existing diagnosis of Bipolar

II Disorder. *Id.* at 8. The Individual's Consultant concluded that the Individual is "capable of an exceptional level of occupational, academic, and social success." *Id.* The Individual's Consultant recommended that the Individual continue individual psychotherapy; ongoing medication management; and further diagnostic evaluation if his behavior were to escalate, if additional relevant symptoms appear, or if symptoms worsen. *Id.* at 9.

The Individual provided for consideration three letters: one from his supervisor (Individual's Current Supervisor); one from a former supervisor from his last place of employment (Individual's Former Supervisor); and one from a friend he met in college (Individual's Friend). Exs. B–D. The Individual's Current Supervisor indicated that he was unaware of the Individual's Bipolar II diagnosis, "highlight[ing] how little his condition has affected his career and the work he does." Ex. B at 1. Regarding the Individual's behavior at work, the Individual's Former Supervisor acknowledged a "personality conflict" between the Individual and another manager but was otherwise complimentary, recounting the Individual's "solid judgment." Ex. C at 1. Last, the Individual's Friend noted "minor instances" of excitable behavior in college, where the Individual would binge watch television and have an irregular sleep schedule. Ex. D at 1. However, the Individual's Friend observed that those behaviors have been "noticeably absent in the last couple years" and further observed that the Individual appears "normal." *Id.*

As of the date of the hearing, the Individual maintained compliance with the medications prescribed by the Individual's Psychiatrist. Ex. G at 1. Furthermore, he remained in regular contact with both the Individual's Psychotherapist and the Individual's Psychiatrist and testified as to the benefit of their treatment, his intention to continue treatment with them, and his intention to comply with their treatment recommendations. Tr. at 44–50. During the hearing, the Individual admitted to what he described as a hypomanic episode about a week prior. *Id.* at 22. He also admitted to experiencing a depressive episode about two weeks prior. *Id.* at 24–25. However, according to his testimony, the Individual experienced significantly lessened durations of these episodes. *Id.* at 22, 25 (describing his hypomanic episode as having lasted for "about half a day . . ." and his most recent depressive episode as having lasted for "four to five days"). Notably, a criterion for a hypomanic episode pursuant to the *DSM-5* is that the episode "last[s] at least 4 consecutive days and presents most of the day, nearly every day[.]" Ex. 7 at 39. Furthermore, the Individual reported that his hypomanic and depressive symptoms had been significantly lessened since resuming treatment. Tr. at 23, 25–26.

After hearing the testimony of the Individual, the DOE Psychologist opined that the Individual had received appropriate treatment since the October 2023 clinical interview and that the Individual's condition had stabilized. *Id.* at 68–69. The DOE Psychologist expressed that the Individual's prognosis was "very positive" based upon the Individual's treatment, though he acknowledged a chance of his symptoms increasing if the Individual discontinued his medication. *Id.* at 71. Regardless, the DOE Psychologist concluded that the Individual had "insight" into his diagnosis and had been "exhibiting good judgment[.]" *Id.* Regarding the Individual's self-described hypomanic and depressive symptoms, the DOE Psychologist noted that they had "lessened" and opined that the "combination of his medication and therapy [were] effective." *Id.* at 70. He was also not worried regarding the ongoing adjustment of the Individual's medications, as this was normal in the course of treatment. *Id.* at 72. When asked whether "in [his] opinion . . ." [the

Individual] [had] an illness or mental condition that may cause a significant defect in his judgment and reliability[.]” the DOE Psychologist concluded “at this moment, no.” *Id.* at 70.

V. ANALYSIS

The opinion of the DOE Psychologist that the Individual has a psychological condition that could impair her judgment, stability, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b). Conditions that could mitigate 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) [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; and,
- (e) there is no indication of a current problem.

Id. at ¶ 29.⁴

By all accounts, the Individual has fully complied with his clinicians’ treatment recommendations, including continuing psychotherapy and medication management, since November or December 2023. While the record reflects the Individual discontinued his initial treatment for two years, the Individual specifically described a Cerebral provider misdiagnosing him, Cerebral re-assigning the Individual to numerous providers within six or seven months, and the adverse side effects of the medications prescribed by those providers. Given those circumstances, the discontinuation of treatment in 2021 detracts little from the Individual’s current period of compliance with his treatment plan—with which he has actively engaged for approximately five months and which consists of continuity of care from his treatment providers, regular scheduled sessions with the same providers, and active communication regarding the management of his medication and symptoms. Moreover, the DOE Psychologist opined that the Individual’s treatment regimen was appropriate and could control his Bipolar II Disorder with continued compliance. Accordingly, I find the first mitigating condition under Guideline I applicable. *Id.* at ¶ 29(a).

⁴ The fourth and fifth mitigating conditions under Guideline I are inapplicable in this case as it is uncontested that the Individual has been diagnosed with Bipolar II Disorder. Tr. at 37–39.

In addition to the Individual's full compliance with his ongoing counseling and treatment, into which he voluntarily entered, the Individual has favorable prognoses from each of his clinicians and the Individual's Consultant. Moreover, the DOE Psychologist also concluded that the Individual's prognosis for managing his condition in the future is good given that the Individual has stabilized with treatment and that his Bipolar II Disorder symptoms have lessened. While the DOE Psychologist noted the possibility of the Individual's symptoms worsening without medication, the DOE Psychologist concluded that the Individual had been exercising good insight and judgment and that it appears that the Individual has complied with his medication treatment. For these reasons, I find the second and third mitigating conditions under Guideline I applicable. *Id.* at ¶ 29(b)–(c).

In light of the Individual's strict compliance with the treatment recommendations from his clinicians, stabilization of his mood episodes since the Individual began receiving treatment, and the positive prognoses from the DOE Psychologist and the Individual's clinicians, I find that the Individual has mitigated the security concerns related to his diagnosis with Bipolar II Disorder. Accordingly, I find that he 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 SSC. Accordingly, I have determined that the Individual should be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals