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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	October 14, 2011)	
)	Case No.: PSH-11-0001
_____)

Issued: February 16, 2012

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

I. BACKGROUND

The Individual is employed by a DOE contractor and has held a DOE access authorization for a number of years. Exhibit (Ex.) 18 at 8. During the period August 2009 through November 2009, the Individual went to his office in a secured building late at night during non-duty hours. Ex. 15. Further, the Individual had made several unauthorized purchases from his government-issued credit card during that period. Ex. 15. In explaining these events to his superiors, the Individual asserted that the incidents were a result of his experiencing a manic episode of his Bipolar Disorder. Ex. 15 at 7. This disclosure prompted the Local Security Office (LSO) to conduct a January 2010 Personnel Security Interview (2010 PSI) with the Individual. Ex. 20. After the PSI, the LSO referred the Individual to a DOE consultant-psychiatrist (DOE Psychiatrist) for an evaluation. The DOE Psychiatrist examined the Individual in July 2011 and issued a report (Report). Ex. 3.

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

After reviewing the Individual's personnel security file, the LSO informed the Individual in an August 2011 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (h) and (l) (Criteria H and L, respectively). *See* Ex. 1 (Notification Letter). The Notification Letter also informed the Individual that his security clearance was being suspended and that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. Ex. 2 at 8. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced 27 exhibits into the record (Exs. 1-27) and presented the testimony of two witnesses, a personnel security specialist and the DOE Psychiatrist. The Individual, represented by counsel, presented his own testimony, as well as the testimony of three witnesses: his counselor (Counselor), and two supervisors (Supervisors 1 and 2). *See* Transcript of Hearing, Case No. PSH-11-0001 (hereinafter cited as "Tr.") The Individual also tendered 26 exhibits, Exs. A-Z, including a statement from his treating psychiatrist (Individual's Psychiatrist), Ex. Y.

II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer may consult adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (the Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id. See generally Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988)(*Egan*) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criteria H and L

1. The Individual's History of Psychiatric Illness

The Individual was first diagnosed as suffering from Bipolar Disorder in 1995 and suffered from acute manic episodes of Bipolar Disorder in 1989, 1995, 2000 and 2009.² Ex. 5 at 2; Ex. 3 at 1. Following his examination of the Individual, the DOE Psychiatrist confirmed the Individual's diagnosis of Bipolar-I Disorder. Ex. 3 at 2. In determining whether the Individual's illness could cause a significant defect in judgment and reliability, the DOE Psychiatrist, in his report, noted that the Individual had, at times, discontinued certain medications and refused treatment on the occasions when a manic episode would erupt. Ex. 3 at 2-3. In 2002, the Individual assured the LSO that his social support network and his church bishop would provide a "profound kind of guarantee" that he would stay the course of treatment. Ex. 3 at 3. However, in 2009, the Individual misinterpreted attempts by his wife and his then-psychiatrist to get the Individual to seek additional help for his manic episode. Ex. 3 at 3. Given that fact, the DOE Psychiatrist was not confident that the Individual would seek prompt treatment for a future episode of mania. Ex. 3 at 3. Thus, the DOE Psychiatrist concluded that a manic episode of the Individual's Bipolar Disorder could cause a significant defect in judgment and reliability. Ex. 3 at 3.

2. The Individual's History of Financial Irresponsibility and Unusual Conduct

During a 1991 DOE-sponsored psychiatric evaluation, the Individual admitted that, during a 1989 manic episode, he went on a spending spree. Ex. 6 at 2. A 1990 credit report indicated that the Individual had credit accounts totaling \$126,962.³ Ex. 25 at 310-33. A 1996 credit report indicated that the Individual had a credit balance of \$88,961 of which there were 17 recently opened accounts with credit balances totaling \$49,000. Ex. 25 at 238-44. In late 2000, the Individual had two vehicles and a motorcycle voluntarily repossessed. The Individual filed for Chapter 7 bankruptcy in February 2001. Ex. 25 at 40-41,159. During a 2001 OPM investigation, the Individual admitted that the bankruptcy was the result of unwise expenditures he made during his 2000 manic episode. Ex. 25 at 140, 145. In a PSI conducted in 2002, the Individual admitted that, during his 2000 manic episode, he lacked financial judgment. Ex. 21 at 85-86.

During his 2009 manic episode, the Individual purchased a truck to live in because of his recent decision to separate from his wife. Ex. 20 at 54. Because his wife kept his credit cards and check book during this episode, the Individual began to run out of money and ultimately used his government credit card to rent hotel rooms and to pay for personal expenses. Ex. 20 at 76-82, 111-17. During the 2010 PSI, the Individual admitted that, during the 2009 manic episode, he

² As recorded above, the Individual was first diagnosed as suffering from Bipolar Disorder in 1995. However, the Individual believes he suffered a manic episode in 1989. The DOE Psychiatrist accepts the Individual's belief that he did, in fact, suffer a manic episode in 1989. Ex.3 at 1.

³ The Notification Letter identified this credit report as having been obtained in 1989 and showing credit accounts totaling \$130,717. Ex. 1 at 6.

had made “wacky” purchases such as buying multiple items regardless of his actual need for the item. Ex. 20 at 54. Additionally, during this manic episode, the Individual, while on scheduled leave, would come to his office in a classified facility late at night to bring and store boxes of books and to check E-mails. Ex. 20 at 61-63. When asked about these incidents in the 2010 PSI, the Individual admitted that he had made bad choices and possessed sub-standard judgment during the 2009 manic episode. Ex. 20 at 78.

3. The Associated Security Concerns

Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines, Guideline I. Conduct involving such psychological conditions can raise questions about an individual’s ability to protect classified information. *Personnel Security Hearing*, Case No. TSO-1013 (July 19, 2011) (Bipolar Disorder found to raise security concerns). In light of the DOE Psychiatrist’s determination that the Individual suffers from Bipolar Disorder, a condition that may cause a significant defect in the Individual’s judgment and reliability, the LSO had sufficient grounds to invoke Criterion H.

Criterion L concerns circumstances tending to show that the Individual is “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l). It is well-established that financial irresponsibility raises doubts as to an individual’s honesty, reliability and trustworthiness, and raises security concerns under Criterion L. *See* Adjudicative Guidelines, Guideline F, ¶ 18 (the “failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”); *Personnel Security Hearing*, Case No. TSO-0507 (October 31, 2007). Similarly, other conduct casting doubt on an individual’s willingness to comply with rules or regulations – in this case, improper use of his DOE-issued credit card and his admissions of periods of exercising questionable judgment – also calls into question an individual’s honesty, trustworthiness, and reliability. *See* Adjudicative Guidelines, Guideline E, ¶ 16(c). Given the Individual’s admitted bouts of excessive financial indebtedness, his misuse of his DOE-issued credit card and his admissions of past poor choices and substandard judgment, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

As an initial matter, I find that the Criterion L derogatory information cited by the LSO has its origins in, and is intimately connected to, the Individual’s Bipolar Disorder. The evidence in the record indicates that the individual’s financial irresponsibility and other questionable activities occurred when the Individual was suffering from a manic episode of his Bipolar Disorder and were a direct result of these episodes. *See* Tr. at 143-46, 163, 205. Consequently, I need only

consider if the Individual has resolved the Criterion H concerns. If the Individual resolves the Criterion H concerns, then it is unlikely that the type of Criterion L behavior detailed in the Notification Letter will reoccur. Conversely, if I find that the Individual has not resolved the Criterion H concerns related to his Bipolar Disorder, I cannot find that the Criterion L concerns have been resolved.⁴

At the hearing, the Individual sought to present evidence indicating that the risk that he would have another manic episode is low. The Individual asserts that the 2009 manic episode was induced from a new medication, Vyvnase, and that, given the pattern of his manic episodes, another episode may not occur until after his retirement or may never occur. The Individual also denied at the hearing that he stopped taking medication without consulting his physician. Further, the Individual presented evidence that, should he experience another manic episode, a four-person "intervention" team would intervene to ensure that he would receive immediate, effective treatment for the episode. The Individual also presented evidence to demonstrate his excellent work performance and to establish the fact that, even while suffering from a manic episode, he committed no breaches of security. A summary of the relevant testimony is presented below.

The Individual presented a written statement from his psychiatrist (Individual's Psychiatrist) stating that the Individual has been highly adherent to his treatment plan and has gone to great lengths to minimize the risk of a recurrent manic episode. Ex. Y at 2. Because of these efforts, the Individual's Psychiatrist believes that the risk of the Individual having a future severe manic episode is greatly reduced and that the time between manic episodes will likely be extended. Ex. Y at 2.

The Individual's Counselor testified that the Individual has adopted the practice of performing a daily check of his thinking and mood so as to detect problems earlier. Tr. at 82. In their meetings, the Counselor watches the Individual closely for changes in behavior. Tr. at 83. Overall, the Counselor assessed the Individual's condition as "stable" and notes that, despite the increased stress associated with the suspension of his security clearance, the Individual has not experienced another manic episode. Tr. at 88.

The Individual testified that, to prevent the difficulties that arose from his last manic episode, he has created an intervention team of four individuals who are charged with confronting him should he suffer from another manic episode. Tr. at 137, 140-41. The Individual's bishop, the Individual's Psychiatrist, Counselor and Wife are members of the intervention team. Tr. at 141. The Individual sent a letter to each of these four individuals requesting that they personally intervene if the Individual demonstrates any unusual behaviors. Tr. at 141; Ex. J. Attached to the letter is a list of manic and hypomanic symptoms for their reference and an internet article regarding an actor suspected of suffering from Bipolar Disorder. Tr. at 141. The Individual believes that if his intervention team confronts him with his letter and the attached article, it would be hard for him to refuse to seek immediate medical help. Tr. at 141. Unlike the result

⁴ The Individual submitted evidence of his subsequent payment of the debts referenced in the Notification Letter. Exs. D, E, K, M. However, as described above, I find that his financial problems are connected to his Bipolar Disorder and that, should another manic episode occur, the Individual would be at significant risk for future bad financial judgments.

from his Wife's intervention attempt in 2009, he would find it impossible to deny that he was in the midst of a manic episode. Tr. at 142.

The Individual also testified that, as an added precaution, he has given his Wife a power of attorney that will allow her to make decisions for him in the event of a future manic episode. Tr. at 142. Additionally, the Individual's Psychiatrist has assured the Individual that, if the Individual was a "danger in any way," she would ensure that the Individual received treatment in a hospital. Tr. at 142.

Supervisors 1 and 2 testified as to the Individual's excellent work performance for a number of years. Tr. at 54, 56, 69-71. Neither supervisor would have doubts regarding the Individual's future performance or ability to protect classified information, despite their knowledge of the fact that the Individual's Bipolar Disorder could reoccur. Tr. at 56-57, 71-72. Both Supervisors recommended that the Individual's security clearance be restored. Tr. at 60, 71-72. In addition to testimony from the Supervisors regarding the Individual's ability to protect classified information, the Individual elicited testimony from the personnel security specialist confirming that during the 2009 manic episode the Individual did not compromise classified materials. Tr. at 35. The Individual also submitted ten letters from friends and individuals who have worked with him, attesting to the Individual's good character and their confidence that the Individual would not endanger classified materials. Ex. I.

After listening to all of the witnesses, the DOE Psychiatrist testified as to his current assessment of the Individual. The DOE Psychiatrist testified that, should the Individual suffer another manic episode, it would be likely that the Individual's judgment and reliability would be impaired. Tr. at 191. The DOE Psychiatrist was unable to provide an estimate of the probability that the Individual would suffer another manic episode. Tr. at 192. The DOE Psychiatrist commented that it is "not unusual" that individuals suffering from Bipolar Disorder will begin to feel well and decide on their own not to continue taking medication. Tr. at 192. While the Individual has instituted a "remarkable" regimen to prevent future manic episodes, the DOE Psychiatrist testified that he could not be certain that the Individual's regimen would prevent another manic episode. Tr. at 193.⁵

Given the evidence submitted in this case, I find that the Individual has not resolved the Criterion H security concerns raised by the Individual's Bipolar Disorder. With regard to the Individual's arguments regarding the scant likelihood that he would have a future manic episode, I find these arguments unavailing. Both the Individual's Psychiatrist and the DOE Psychiatrist have stated that it is impossible to predict with certainty whether the Individual will suffer a future manic

⁵ The Notification Letter alleges that, in the past, the Individual, on his own, stopped taking prescribed medication for his illness. See Ex. 1 (Summary of Security Concerns – Sections I.L (stopped taking Vyvnase), I.M (stopped taking Carbitrol), and I.O (Stopped taking Depakote)). The Individual disputes these allegations and testified that either he did not in fact stop taking the medication (Carbitrol) or he stopped taking the medication with his physician's consent. Tr. 135-36, 139 (Carbitrol); Ex. B (prescription records); Tr. at 156-57 (Depakote). With regard to Vyvnase, a medication for Attention Deficit Disorder, the Individual stopped taking the medication because of the severe side effects. Tr. at 139. The Individual testified that he now knows not to stop taking medication without consulting a physician. Tr. at 139. The DOE Psychiatrist testified, however, that the fact that the Individual continued taking all of his medications in 2009, but yet still suffered a manic episode in 2009, supports a finding that the Individual may suffer future bouts of mania. Tr. at 193-94.

episode. Ex. Y at 1 (Individual “could have many years without an incident” but also stating that the risk of relapse “is not zero”); Tr. at 192, 194. The Individual’s Psychiatrist asserts that the time between the Individual’s manic episodes will be extended and that the risk of recurrence is low for the foreseeable future. Ex. Y at 1. On the other hand, the DOE Psychiatrist testified that it is not possible to make a prediction as to the likelihood of a future manic episode based upon dates of prior manic episodes. Tr. at 195. Moreover, while the DOE Psychiatrist agrees that the Individual’s 2009 manic episode was likely triggered by Vyvase, this factor would not have changed his assessment of the Individual. Tr. at 204. The DOE Psychiatrist went on to testify that individuals with Bipolar Disorder are always at risk for destabilization based on emotional factors or the introduction of new medications.⁶ Tr. at 204; *see* Ex. 21 at 12 (Individual’s assertion that his use of a herbal supplement, ginkgo biloba, triggered his 2000 manic episode). In reviewing the conflicting testimony, I find the DOE Psychiatrist’s testimony more convincing. As a result, I cannot find to a sufficient certainty that the Individual’s risk of experiencing a manic episode is so low as to resolve the Criterion H security concerns.

The Individual has presented substantial evidence as to his belief that his intervention team would help him receive early treatment for manic episodes and thus prevent lapses of bad judgment and unreliability in the future. I am not sufficiently convinced that the intervention team can mitigate future bouts of manic episodes and their associated bad judgment. In 2009, the Individual’s wife confronted him as to the possibility he might be suffering from a manic episode, but the Individual rejected her assessment of his condition. Significantly, the Counselor could not give a definitive answer to the question whether such an intervention could persuade someone suffering from a manic episode to seek early treatment. The Counselor opined that while the “hope” would be that such a person could be persuaded to seek treatment early, the state of mind of the individual would be the determining factor whether such help was accepted. Tr. at 101-03. The Counselor went on to testify that it is impossible to determine what state of mind such an individual would have in the future. Tr. at 102-03. Similarly, the Individual’s Psychiatrist’s statement opined that it is “possible” that the Individual would not make decisions in his best interest during a manic episode. Ex. Y at 1. Consequently, if a future manic episode affected the Individual’s thinking to a significant extent, intervention may not be effective.

Given my above findings, I find that the Individual has not completely resolved the security concerns raised by the Criterion H derogatory information. *See Personnel Security Hearing*, Case No. TSO-1006 (May 18, 2011) (individual with Bipolar Disorder and a five-year history of no manic episodes and compliance with prescribed medications found not to have resolved security concerns raised by his illness).

Because I find that the Criterion H concerns have not been resolved, I cannot find that the Criterion L concerns have been resolved. As discussed above, the Individual has a history of making poor judgments and having poor reliability while in the midst of a manic episodes. Such a pattern of unreliability would likely reoccur if the Individual is unfortunate enough to suffer another manic episode in the future.

⁶ The fact that the 2009 episode was essentially not the Individual’s fault unfortunately does not change the fact that the Individual suffers from Bipolar Disorder and is at risk for future significant manic episodes.

In making this determination, I wish to put on the record that the Individual, in the absence of a flair-up of his illness, is a responsible, hard-working, employee who has provided substantial evidence of many commendable traits. A determination that one is not suitable for a security clearance is not a moral determination of the worth of an individual or necessarily an assessment of loyalty or integrity. The Individual should be commended for his service.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that cast doubts regarding the Individual's eligibility for a security clearance under Criteria H and L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the Individual's suspended access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: February 16, 2012