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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: November 28, 2011)
) Case No.: PSH-11-0025
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Issued: March 22, 2012

Hearing Officer Decision

Kent S. Woods, Hearing Officer:

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization at this time.

I. BACKGROUND

The individual currently is employed by a DOE contractor, and that contractor has requested that he receive a DOE security clearance. Based on issues contained in the individual's security file, the Local Security Office (LSO) conducted a Personnel Security Interview with the individual in August 2011 (the 2011 PSI, DOE Ex. 8). In September 2011, a DOE-consultant psychologist (the DOE-consultant Psychologist) evaluated the individual, and memorialized her findings in a Psychological Evaluation Report (the Report, DOE Ex. 6).

In October 2011, the LSO issued a Notification Letter to the individual, together with a Summary of Security Concerns (Enclosure 2) setting forth the information that created a substantial doubt about the individual's eligibility to hold a DOE security clearance. (DOE Ex. 1). Specifically, the LSO states that a DOE-consultant Psychologist evaluated the individual and concluded that he met the Diagnostic and Statistical Manual of Mental Disorders, IVth Edition, Text Revision (DSM-IV-TR) criteria for Bipolar II Disorder, Recurrent Major Depressive Episodes with Hypo-manic Episodes. The DOE-consultant Psychologist also concluded that the

individual's Bipolar II Disorder is an illness or mental condition which causes or may cause, a significant defect in judgment or reliability, thereby raising a concern under 10 C.F.R. § 710.8(h) (Criterion H). Enclosure 2, DOE Ex. 1.

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. On November 28, 2011, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter, I received testimony from ten witnesses. The LSO presented the testimony of the DOE-consultant Psychologist. The individual testified and presented the testimony of his prescribing psychiatrist, his partner, his stepmother, three friends from his Overeater's Anonymous Program, a co-worker, and his supervisor. Discussion at the hearing centered on the individual's past conduct that formed the basis for his diagnosis of Bipolar II Disorder, the individual's past and current treatment of his condition, and his current functionality and social support.

II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denial"); *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).

Under Part 710 certain types of information raise concerns about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern exists, the individual has the burden to bring forward sufficient evidence to resolve the concern. In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, both favorable and unfavorable. *Id.* § 710.7(a).

III. ANALYSIS OF TESTIMONY AND FINDINGS OF FACT

A. The Individual's Bipolar II Diagnosis Raises a Criterion H Concern

As noted above, in her 2011 Report, the DOE-consultant Psychologist concluded that the individual met the DSM-IV-TR criteria for Bipolar II Disorder, Recurrent Major Depressive Episodes with Hypo-manic Episodes. As support for her diagnosis, the DOE-consultant Psychologist refers to the individual having an angry outburst in the workplace in 2008 that resulted in his termination from his job. She also refers to a period in 2009-2010 when the individual reported to his prescribing psychiatrist symptoms that included disorientation, poor judgment, two "near-miss" car accidents, indecision, detached feelings, and yelling at a co-worker. These symptoms were resolved when the prescribing psychiatrist changed his medication to include a drug for bipolar disorder. Report at 3-4, 5-6. At the hearing, the individual testified that after studying the DOE-consultant Psychologist's report, he now accepts that this is the correct diagnosis for his condition. Hearing Transcript (TR) at 11, 110. The individual's prescribing psychiatrist also testified that she accepted that DOE-consultant Psychologist's diagnosis. TR at 154. I find that the diagnosis of Bipolar II Disorder raises a Criterion H security concern because it clearly is a mental condition that can "impair judgment, reliability, and trustworthiness." Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Assistant to the President for National Security Affairs (December 29, 2005) (Adjudicative Guidelines), Guideline I. As the individual does not dispute this diagnosis, the only remaining issue to be resolved concerning the individual's Bipolar II Disorder is whether the Criterion H concerns arising from the diagnosis have been mitigated.

B. Whether the Individual Has Mitigated the Criterion H Concern

At the hearing, the individual asserted that his Bipolar II Disorder currently is well controlled by medication. He stated that his partner, his supervisor, and several friends are aware of his condition and are able to contact his prescribing psychiatrist if they become concerned about changes in his mood or behavior. TR at 11-13. As discussed below, the testimony of the individual's partner and friends supported these assertions. The individual's prescribing psychiatrist, who sees the individual for thirty minutes approximately every two months to monitor his medications, also stated that the individual is stable on his current medications, and that his support network is adequate. TR at 116, 137. However, after hearing the testimony of the individual and his witnesses, the DOE-consultant Psychologist opined that although the individual has done a lot of the right things to help stabilize his condition, he was not yet receiving adequate psychological counseling to lower his risk of a future depressive or hypo-manic episode. TR at 158, 172.

The DOE does not have a set policy on what mitigates a Criterion H concern. The Hearing Officer makes a case-by-case determination based on the evidence. Hearing Officers properly give deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding the mitigation of concerns related to mental conditions. *See, e.g.,*

Personnel Security Hearing (Case No. TSO-0564) (2008).¹ I applied the Adjudicative Guidelines and the factors listed in 10 C.F.R. § 710.7(c) to the evidence presented in this proceeding, and I find that the individual has not yet demonstrated that he is at low risk for future Bipolar II episodes that could impair his judgment.

Guideline I states that an individual may mitigate a security concern related to psychological conditions with evidence of the following:

- (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 emotional instability was a temporary condition . . . , the situation has been resolved, and the individual no longer shows indications of emotional instability; [or]
- (e) there is no indication of a current problem.

Adjudicative Guidelines at 13.

Based on his testimony and demeanor at the hearing, I accept the individual's assertion that he has fully accepted his diagnosis of Bipolar II Disorder and his need for medication and ongoing medical treatment. Although the individual admits that he had doubts about the Bipolar II diagnosis in the past, he contends that he now has arrived at a full acceptance of his condition. This acceptance was supported by the testimony of the individual's prescribing psychiatrist, by the DOE-consultant Psychologist, and by the individual's partner, supervisor, stepmother, and two friends, who state that they were informed of the diagnosis by the individual. TR at 15-16, 47, 52, 83, and 90. The testimony of his partner, his step mother, his friends, his supervisor and his co-worker confirm that, aside from the 2008 and 2010 incidents described above, the individual has led a normal, stable life and interacted in a positive way with his family, friends and co-workers in recent years. Furthermore, I am persuaded by the testimony of the individual, his partner, and the prescribing psychiatrist that the individual is sincerely committed to a regulated life-style which will promote the individual's good health in the future. TR at 131-133. With regard to the effective treatment of any future episodes, I find that the individual has corroborated his assertion that he consistently has acted in accordance with the guidance of his

¹ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

medical professionals and his partner in seeking appropriate treatment, and that it is likely that he will continue to do so. In particular, the prescribing psychiatrist's clinical progress notes indicate that the individual has been cooperative in identifying his moods and stressors so that he can receive appropriate medication. *See* Progress Notes, April 2009 to Present, attached to individual's January 13, 2012 letter.

With respect to Guideline I(a), the DOE-consultant Psychologist and the individual's prescribing psychiatrist agree that the individual can significantly reduce the risk of a Bipolar II episode with medication. TR at 135-136, 166. Based on the testimony of the individual, his partner, and his prescribing psychiatrist, I find that the individual complies with his treatment plan, and that he has been stable since September 2010. TR at 113, 25, 148. However, both experts acknowledge that medication alone does not entirely eliminate the risk of a Bipolar II episode, and that the individual must engage in other therapeutic practices and maintain an effective support network in order to reduce the occurrence or severity of an episode. TR at 138, 157-158, 168.

In this regard, I find that the individual has not yet satisfied conditions Guideline I(b) and (c). The individual's prescribing psychiatrist and the DOE-consultant psychologist offered conflicting prognoses. The individual's prescribing psychiatrist testified that the individual is stable and at low risk for a future episode. She also testified that his current support network is adequate to identify and treat an oncoming episode before it fully develops. TR at 151,153.

The DOE-consultant psychologist testified that with his current treatment regimen, the individual remains at moderate risk for developing significant symptoms in the future. TR at 158. She opined that the individual needs to establish a therapeutic relationship initially involving weekly meetings with a licensed counselor. She stated that feedback from a counselor would assist the individual in evaluating his moods and behavior, and increase his understanding of his emotional patterns, thereby safeguarding against a future Bipolar II episode. TR at 164-166. While the individual's prescribing psychiatrist maintained that the individual was currently at low risk for an episode, she testified that she has recommended to the individual that he see a counselor because psychotherapy had helped him in the past, and because it would increase the individual's stability by helping to develop insights to reduce emotional stress and identify triggers for his mood changes. TR at 138-139.

Based on this testimony, I conclude that the DOE-consultant Psychologist's concerns about the effectiveness of the individual's current treatment regimen are valid. As noted above, the individual was fired in 2008 after displaying anger in the workplace. The individual acknowledges that he experienced significant emotional stress in his subsequent position in 2009 and 2010, and that in the summer of 2010 he had two near-miss automobile accidents due to problems with his reaction time while driving. In light of these significant incidents in the last few years, I agree with the DOE-consultant Psychologist that the individual requires the insight and monitoring of a professional counselor in order to minimize the risk for a future Bipolar II episode.² For these reasons, I also find that the individual has not satisfied Guideline I(d) and

² With regard to Guideline I(d), Bipolar II Disorder is not a temporary condition; the DOE-consultant Psychologist testified that it recurs. TR at 155.

I(e). Based on the DOE-consultant psychologist's testimony that the individual has a significant risk of suffering further symptoms, I find that a problem exists.

At the hearing, the individual indicated a willingness to enter a counseling relationship, and stated that he was searching for an appropriate counselor. TR at 115-117. Following the hearing, the individual submitted a letter from a clinical psychologist indicating that he had met with the individual for an initial psychotherapy evaluation, and that they had arranged to continue therapy on a weekly basis. *See* February 2, 2012, e-mail from the individual attaching February 1, 2012, letter from the clinical psychologist.

The DOE-consultant Psychologist's testimony indicated that once the individual establishes a psychotherapeutic relationship with a qualified, experienced professional, initially involving weekly meetings, he will be at a lower risk for suffering a future Bipolar II episode. TR at 171-172. Expert testimony before this office indicates that 12 sessions with a therapist or counselor generally are considered the minimum for achieving effective therapeutic results. *See Personnel Security Hearing* (Case No. PSH-11-0021) (2012). Prior to the closing of the record in this proceeding, the individual was able to document only his initial meeting with his new psychologist. Under these circumstances, I find that the individual has not yet established that he and his psychologist have developed a psychotherapeutic relationship that will be effective in meeting the recommendations of the DOE-consultant Psychologist and minimizing his risk of developing future Bipolar II Disorder symptoms. Accordingly, I find that the individual has not shown adequate evidence of rehabilitation and reformation from his Bipolar II Disorder at this time.

IV. CONCLUSION

For the reasons set forth above, I find that the individual was properly found to be suffering from Bipolar II Disorder, an illness or mental condition which causes or may cause, a significant defect in judgment or reliability, thereby raising a concern under Criterion H. Further, I find that this derogatory information under Criterion H has not yet been mitigated by evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: March 22, 2012