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United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	January 18, 2012	)	
		)	Case No.: PSH-12-0004
		)	

Issued : May 8, 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) 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."[1] For the reasons set forth below, I conclude that the individual's access authorization should be restored.[2]

I. BACKGROUND

The individual works for a Department of Energy (DOE) contractor and holds a DOE access authorization, now in suspension. In September of 2011, the individual informed his contractor, which in turn informed the local DOE security office (LSO), that he had been hospitalized for treatment of his depression and suicidal thoughts. Exhibit 15. The LSO summoned the individual

[1] Access authorization is defined 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.

[2] 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.

for an interview with a personnel security specialist on September 20, 2011. Exhibit 22 (Transcript of Personnel Security Interview). After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (DOE psychiatrist) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 19. Based on this report and the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a Notification Letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE counsel introduced 26 exhibits into the record of this proceeding and the individual introduced five exhibits. At the hearing, the DOE counsel presented the testimony of the DOE psychiatrist and the individual presented the testimony of four witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual's Mental Health History

The following information was obtained from the individual's PSI and the DOE psychiatrist's report, and is generally not disputed by the individual. As a college freshman in 1983, the individual was hospitalized after he experienced an episode in which he lost touch with reality and had delusional thoughts. In 1996, after starting a new job, he was hospitalized again, following a depressive episode and suicidal thoughts. More recently, the individual was hospitalized on three occasions within two-and-a-half years: for six days in March 2009, following another bout of depression and suicidal thoughts; for a total of seven days in August 2010, after a possible suicide attempt from overdosing on a prescribed medication and an ensuing depressive episode; and for nine days in September 2011, after experiencing yet another bout of depression and suicidal thoughts. Each of these last three episodes appears to have been brought on by the stress surrounding an acrimonious divorce proceeding.

The DOE psychiatrist evaluated the individual after each of the three most recent hospitalizations. In his 2009 and 2010 evaluations, the DOE psychiatrist noted that the individual had been diagnosed in the past with Bipolar II Disorder, and he concurred with that diagnosis, as set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association*, 4th Edition, Text Revised (DSM-IV-TR). He noted, however, that "[t]he brief manic episode in college is probably best described as a Brief Psychotic Episode, rather than part of his Bipolar II Disorder." He concluded in each evaluation that the individual's Bipolar II Disorder was not an illness or mental condition that affects his judgment or reliability. Exhibit 20 at 7-8; Exhibit 21 at 7-9. In a third evaluation of the individual, following his September 2011 hospitalization, however, the DOE psychiatrist altered his diagnosis, finding that the individual now suffered from Bipolar I Disorder, that the condition is chronic and likely to recur, and that it causes, or may cause, a significant defect in judgment or reliability. Exhibit 19 at 6-8.

B. The Notification Letter

Much of the information set forth in the preceding sections is cited in the Notification Letter, as it creates a substantial doubt as to the individual's eligibility to hold a clearance. The information regarding the individual's mental condition pertains to paragraph (h) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Under Criterion H, derogatory information that may raise a security concern is defined as "[a]n illness or mental condition which, in the opinion of a psychiatrist . . . causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

As support for the LSO's concerns under Criterion H, the letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Bipolar I Disorder. Exhibit 1. The letter further cites the individual's history of hospitalizations for depression and for his manic or psychotic episode in 1983. *Id.*

C. The DOE's Security Concerns

The derogatory information regarding the individual's mental health adequately justifies the DOE's invocation of Criterion H, and raises significant security concerns. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability or trustworthiness can raise concerns about an individual's ability to protect classified material. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information,* The White House (December 19, 2005) (Adjudicative Guidelines), at Guideline I.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 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). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996). The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. Testimony at the Hearing

The individual's supervisor and mother offered insight into the individual's history and character. The supervisor has daily contact with the individual and has known him since he began working at his present position about six years ago. Transcript of Hearing (Tr.) at 91. He was aware that the individual had been going through a difficult divorce and had been hospitalized at least twice for depression. *Id.* at 93. Nevertheless, he regards the individual as a very conscientious employee with unquestionable work ethic and performance. *Id.* at 91-92. He has observed no aberrant or irritable behavior in the individual, and considers him to be fully functional since the 2011 hospitalization. *Id.* at 94.

The individual's mother, who lives in the same town as her son, was aware of his 1983 and 1996 hospitalizations and viewed them as distant and far-spaced episodes. *Id.* at 104. She is aware of no manic or psychotic episodes since 1983. *Id.* at 115. She had particular knowledge of more recent events, because the stresses he has encountered since 2009 have affected the whole family. In 2009, the individual's wife filed for divorce and custody of their children, and the individual moved in with his parents. *Id.* at 102, 105. In a family discussion, the individual and his parents agreed that he was depressed, as he had lost focus and had "shut down." *Id.* at 108-09. She pointed out that the individual has always taken leave from work as soon as he realizes he is losing focus. *Id.* at 109, 120. The medications he began taking as a result of his 2009 hospitalization helped him out of his depression and he bounced back quickly. *Id.* at 107-08. Continuing divorce litigation and the discovery that his attorney had become incapacitated and could no longer represent him contributed to the stress that led to his 2010 hospitalization. *Id.* at 118. The individual was at his parents' house when he took an overdose of Lamictal. The mother is convinced that that action was not a suicide attempt, but rather a "call for help." *Id.* at 110-11. More divorce issues, coupled with job stress, led to the 2011 hospitalization. *Id.* at 118. The individual changed health insurance providers in January 2011 and, following this third hospitalization, the individual attended an Intensive Outpatient Program, which has left him much better able to cope with stress. *Id.* at 111. As proof, she offered that her son has coped extremely well with the additional stresses of this personnel security proceeding. *Id.* at 112, 121. She also noted that the divorce was recently made final, and the individual is now generally more relaxed and confident. *Id.* at 111, 120.

The individual explained that mental health professionals treating him since 1983 have told him that he might possibly have a Bipolar Disorder. *Id.* at 126, 129, 161. "Bipolar," "racing thoughts," and "manic episode" are terms that the individual acquired from the psychologists and psychiatrists who treated him, and he would use these terms to describe himself. *Id.* at 148-50. Other than the 1983 episode, he has admitted himself to hospitals voluntarily and for reasons of depression. *Id.* at 126, 131, 137, 139. The symptoms were similar each time: lack of sleep, agitation about stressors (studies, work, divorce), and suicidal thoughts. *Id.* at 127, 131, 139. In March 2009, he suffered a grand mal seizure, and was placed on Lamictal and lithium, though he had an adverse reaction to lithium and discontinued it under the direction of his physician. *Id.* at 133, 137-38.

The individual furnished details about his 2011 hospitalization. Having changed his health care provider in 2011, he needed to adjust to its policies. *Id.* at 138. In September 2001, he recognized

that he needed additional care. When he requested an appointment with his mental health professionals, he learned there was a four-week wait; if he needed more immediate attention, he was to go to the hospital, which is the path he pursued. *Id.* at 139, 172. *See also id.* at 68-70 (testimony of worksite psychologist) (access to doctor would have been more appropriate, but it was not an available option). Despite the difficulty to see one's doctors under the new plan, it has advantages as well, key among which is the Intensive Outpatient Program to which he was referred upon his release from the hospital, which he completed but continues to offer him easy access to mental health professionals in the future. *Id.* at 141-42, 164-65. His insurance provider has also allowed him to attend a 12-week education class on handling depression, which had provided additional tools for managing stress. *Id.* at 144-45. He now sees two specialists every six weeks, on a staggered schedule, through his provider. *Id.* at 163. In addition, he has regular appointments with a worksite psychologist, with whom he discusses the stress management issues. *Id.* at 155. *See also id.* at 64 (testimony of worksite psychologist). He has learned that she has the authority to excuse him from work for mental health reasons, though he has not needed such intervention. *Id.* at 156.

The worksite psychologist also testified. After the individual's 2010 hospitalization, they began meeting once a month. *Id.* at 61. She stated that she has never observed a manic episode in the individual. *Id.* at 65. She helped the individual gain an awareness of his reaction to stress; he tended to catastrophize events and become extremely depressed. She also helped him learn to cope with stress, which has been supplemented by the 12-week class he recently attended. *Id.* at 66-67. She believes that the individual may face future episodes of depression, even though the stresses of his divorce appear to be resolved at this point, but she also believes that the individual has advanced significantly in his ability to handle stresses. *Id.* at 72, 83-84. She also noted that he has significantly improved access to health care than in the past, both through her and through the insurance provider's Intensive Outpatient Program. *Id.* at 73, 80. In her opinion, the individual has no significant defect in reliability; his only defect in judgment is that he can be too critical of himself.
Id. at 86. Finally, though he may suffer future episodes of agitated depression in the future, she would not expect them to cause any lapses in judgment, as she has never observed any, particularly regarding his work or his family. *Id.* at 87.

The individual presented the testimony of a psychiatrist who evaluated him in preparation for this hearing.[3] The evaluating psychiatrist reviewed the individual's medical records and interviewed him in a single session. *Id.* at 10-11. He testified that, in his opinion, the diagnosis of Bipolar Disorder is inaccurate for the following reasons. First, no one has observed any manic behavior; though the individual himself has described "racing thoughts," the evaluating psychiatrist explained that those thoughts were, more properly, obsessive depressive rumination. *Id.* at 14, 30. Second, only one episode—that of 1983—has ever been described as manic, and it was more likely a psychotic episode, as the DOE psychiatrist had surmised at an earlier evaluation. A bipolar individual not on a constant regimen of mood stabilizers (the individual was not) is extremely unlikely to suffer only one manic episode in 30 years, and antidepressant medications, which the individual does take, tend to increase the risk of manic episodes. *Id.* Moreover, the type of depression the individual suffers is agitated, with suicidal thoughts, and has quickly responded to medication, whereas the type of depression associated with Bipolar Disorder is generally lethargic, long-lasting, and resistant to

[3] The individual explained at the hearing that his current insurance provider does not permit its treatment professionals to appear in proceedings of this type. *Id.* at 151.

treatment. *Id.* at 15, 19. Finally, the individual's depressive episodes have been precipitated by external stresses, while depression in bipolar individuals occurs without any external trigger, brought about by internal biology. *Id.* at 20. Instead, the evaluating psychiatrist diagnosed the individual with Major Depressive Disorder, and foresees any future episode as being similar to those the individual has already endured—agitated states, with obsessive depressive rumination. *Id.* at 22, 39. Despite the altered diagnosis, the evaluating psychiatrist stated that the treatment the individual is currently receiving is appropriate. The medications the individual takes, Lamictal and Abilify, properly treat severe agitated depression as well as Bipolar Disorder, and Lamictal further treats his convulsive disorder. *Id.* at 18, 35-37. With respect to the effect of these mental conditions on the individual's judgment and reliability, the evaluating psychiatrist conceded that depression, as well as Bipolar I Disorder and Bipolar II Disorder, may cause significant defects in those areas. *Id.* at 40-41. He maintains, however, that the individual has consistently displayed excellent judgment, getting help when he needed it, even, as in 2011, seeking hospitalization when that was the only avenue available to him to get the immediate help he sought. *Id.* at 39.

After hearing all the testimony at the hearing, the DOE psychiatrist reformulated his opinion of the individual's mental health problem. He explained why he had changed his diagnosis in 2011 from Bipolar II Disorder with no concern about the individual's judgment or reliability to Bipolar I Disorder, which caused a significant defect in judgment or reliability. At each of the three evaluations, the individual appeared "intact psychiatrically." *Id.* at 182. His diagnoses were based instead on the individual's history of hospitalization. *Id.* At the evaluation following the individual's third hospitalization in less than three years, the DOE psychiatrist grew concerned about the recurrent nature of his episodes, which made him question his original diagnosis and replace it with a more serious one. *Id.* at 183.[4] He ultimately conceded at the hearing that, after considering the opinion of the evaluating psychiatrist, a more appropriate diagnosis of the individual would be Bipolar II Disorder or Recurrent Agitated Depression. *Id.* at 192, 196. He emphasized, however, that the more important aspects of the individual's case are the treatment he is receiving and the coping strategies he has developed. *Id.* at 184. He stated that the individual no longer exhibits a significant defect in judgment or reliability. *Id.* at 197. He observed the following changes since his evaluation of the individual: his divorce was now final; he had completed a 12-week course that give the individual tools and strategies for coping with stresses, which in his case formed the precursors to depressive episodes; he had completed the Intensive Outpatient Program; and he sees the worksite psychologist regularly. *Id.* at 185-86. Despite the uncertainty of the diagnosis, he had no concern about the individual's treatment program, as it was appropriate for either of the possible diagnoses. *Id.* at 187. Finally, regarding the future, the DOE psychiatrist expressed his opinion that the individual had employed good judgment in the past, and would be more likely to do so in the future, in light of his treatment resources, his support at home and at work, and the tools he has developed for recognizing and handling the precursors to future depressive episodes. *Id.* at 188-91.

B. Hearing Officer's Analysis

As stated above, the issue in this matter is whether the individual suffers from an illness or mental condition that, in the opinion of the DOE psychiatrist, causes or may cause a significant defect in

[4] Based on what he learned at the hearing, he now believes the third hospitalization was unnecessary and forced upon him by his insurance provider's policies. *Id.* at 194.

judgment or reliability. 10 C.F.R. § 710.8(h). The evidence elicited at the hearing convinced the DOE psychiatrist that his diagnosis of Bipolar I Disorder was questionable. He was convinced from the testimony that a more appropriate diagnosis was Bipolar II Disorder or, more likely, major Depressive Disorder with recurrent agitation. In any event, the DOE psychiatrist revised his opinion at the hearing to state that, no matter which of the two possible diagnoses is correct, the individual does not have a mental condition that causes or may cause a significant defect in judgment or reliability.

I find that the individual continues to require treatment for a depressive condition that may recur in the future as a reaction to seriously stressful events. Nevertheless, based upon my review of the entire record, I am convinced that the individual does not suffer from an illness or mental condition that causes or may cause a significant defect in judgment or reliability. Consequently, the security concerns raised under Criterion H have been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has sufficiently resolved the DOE's security concerns under Criterion H, and therefore has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: May 8, 2012