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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing

Filing Date: December 11, 2023

Case No.: PSH-24-0028

Issued: February 20, 2024

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 not be granted access authorization.

I. BACKGROUND

The Individual is a prospective employee of a DOE contractor for a position that requires possession of a security clearance. In January 2023, the Individual submitted a Questionnaire for National Security Positions (QNSP) as part of his security clearance application in which he disclosed that he had been diagnosed with and been receiving treatment for Bipolar Mood Disorder (Bipolar Disorder). He also reported that he had been disciplined by a former employer and had quit several positions after only a few months of employment. As a result, the DOE Local Security Office (LSO) asked that the Individual be evaluated by a DOE-consultant psychologist (Psychologist). Afterward, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline E and Guideline I of the Adjudicative Guidelines.

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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted four exhibits, marked Exhibits A through D. The LSO submitted nine exhibits, marked Exhibits 1 through 9.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct) and Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1.

Guideline E provides that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. The following is a condition that could raise a security concern:

Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . [a] pattern of dishonesty or rule violations

Id. at ¶ 16(d). The SSC cited that the Individual was disciplined by a former employer (Employer 1) on June 2019 for damaging equipment, he left a position with another employer (Employer 2) on August 2018 because he had a personality conflict with his supervisor, and a third employer (Employer 3) fired him in 2000 for breaking a window. Ex. 1 at 6–7. The cited information justifies the LSO's invocation of Guideline E.

Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. Conditions that could raise a security concern include “[b]ehavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including . . . irresponsible, . . . suicidal, . . . [or] impulsive . . . behaviors” and “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness”

Id. at ¶ 28(a), (b). The SSC cited the following information. The Psychologist concluded that the Individual presented with symptoms consistent with Attention-Deficit Hyperactivity Disorder

² The LSO submitted a single .pdf workbook that includes all nine exhibits. References to the LSO exhibits are to the exhibit number and the page number within the combined .pdf workbook irrespective of the number displayed on the document page.

(ADHD), without evidence of treatment, rehabilitation, or reformation of the symptoms; and the condition can impact judgment and reliability. Ex. 1 at 4. The Psychologist also concluded the Individual presented with symptoms of Bipolar Disorder, “which is characterized by episodes of mania and depression” and can impair judgment and reliability, and there is no evidence that the Individual is receiving psychotherapy. Ex. 1 at 4, 6. The Individual’s military records reflect a diagnosis of Adjustment Disorder with depressed mood and suicidal ideation. *Id.* at 5. The Individual reported that when he does not take his medication he is disconnected and not engaged in things around him. *Id.* He reported past marital problems associated with impulsive spending and infidelity that he attributed to his Bipolar Disorder. *Id.* He reported an inconsistent work history which includes abrupt resignations, disciplinary actions, personality conflicts, and terminations. *Id.* Lastly, the Individual was not taking his medication consistent with the prescription. *Id.* at 6. The cited information justifies the LSO’s invocation of Guideline I.

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 Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

As a child, the Individual received treatment for ADHD. Hearing Transcript, OHA Case No. PSH-24-0028 (Tr.) at 22. He was prescribed medication, but stopped taking it in middle school because his family could not afford it. *Id.* at 24.

The Individual joined the military after high school. *Id.* at 25. While in the military, he experienced being transferred to another platoon while in training because he failed to perform adequately. *Id.* at 28. In training with the new platoon, he made a statement that compelled another recruit to report

to an instructor that the Individual was going to commit suicide. *Id.* at 28. The Individual recalled that he made a “joking” comment regarding getting out of the military by stating “you can also probably kill yourself.” *Id.* at 28–29. As a result, the Individual was referred to a medical professional for an examination, and the military subsequently decided to release the Individual and he returned home in 2000. *Id.* at 29, 32.

In the Individual’s military records, he is reported as being diagnosed with Adjustment Disorder with Depressed Mood and Suicidal Ideation. Ex. 4 at 72. The Individual testified that he knew he was “kicked out [of the military] because of the suicidal tendency.” Tr. at 30.

The Individual testified that later in life he sought mental health treatment at the request of his wife because she noticed “adjustment problems” where he “didn’t get along with people” and she thought he “would benefit from medication.” *Id.* at 32. The Individual also testified that his wife was concerned because the Individual would often spend his paychecks “on a lot of nonsense” and he would “flirt with other girls.” *Id.* at 35. He also testified that when he was alone, at home, with his child he would “start thinking dark thoughts, very inappropriate thoughts such as cheating or spending money [he] didn’t have”³ *Id.* at 37. His wife threatened divorce if he did not seek treatment. *Id.* at 36. The Individual testified that he met with a physician who diagnosed him with ADHD and bipolar depression because of his “extreme depression” and “suicidal thoughts.” *Id.* at 33, 35. The Individual requested and was placed on “mood stabilizers.” *Id.* at 33. The Individual also testified that his physician did not make any recommendation that he receive continuing psychotherapy or see a therapist. *Id.* at 34. However, he later testified that his physician “briefly mentioned” and suggested therapy or counseling, but the Individual chose not to seek counseling. *Id.* at 57. Instead, he met with his physician “periodically every three months” to discuss his medication. *Id.*

During a July 2023 evaluation with the Psychologist, the Individual reported information consistent with his above hearing testimony. Ex. 8. He also reported that “his most significant stressor is work,” and he “hates his current job,” “feels scrutinized by management and coworkers,” and frequently makes mistakes “such as forgetting to do something that he has been asked to do.” *Id.* at 115. He denied that he was actively suicidal while in military training and stated that his joke was misinterpreted. *Id.* at 116.

The Individual told the Psychologist that he had been first diagnosed with Bipolar Disorder between 2016 and 2017. *Id.* The Individual completed a Mood Disorder Questionnaire as part of the evaluation, and the Psychologist reported that the Individual “endorsed all symptoms of [B]ipolar [D]isorder” and “noted that these symptoms/moods were episodic.” *Id.* The Individual stated that his last manic episode had occurred in approximately 2021, and the Psychologist reported the Individual’s “most consistent mood state is depression.” *Id.* The Individual also reported experiencing “sadness despair” and feeling “helpless” and “hopeless.” *Id.* at 118. The Psychologist reported that the Individual endorsed “many behaviors and experiences associated with hypomanic activation such as excitability, impulsivity, and elevated mood.” *Id.* The Individual stated that he had been consistently taking his prescribed medication to stabilize his

³ At this point in his testimony, “dark thoughts” appeared to only reference thoughts of infidelity and profligate spending; however, later in his testimony he alluded to “dark thoughts” when denying any intention to commit suicide. Tr. at 42.

mood. *Id.* According to the Psychologist, the Individual also reported thirteen of sixteen symptoms of ADHD. *Id.* at 118.

The Psychologist opined in his report that the Individual met the criteria for ADHD and Bipolar Disorder. *Id.* at 120. The Psychologist explained that ADHD is a “neuropsychiatric disorder that . . . can impact judgment and reliability.” *Id.* He then opined that “Bipolar Disorder is characterized by episodes of mania and depression. Symptoms can vary drastically for each episode, making a precise prediction of future symptoms presentation and severity impossible.” *Id.* Furthermore, “manic/hypomanic episodes, which [the Individual] has experienced, are periods of abnormally elevated or irritable mood and increased activity or energy lasting at least four days that impair functioning in social and/or occupational functioning.” *Id.* During an episode, the Individual is likely to experience, among other things, “excessive involvement in activities that have a high potential for negative consequences.” *Id.* By contrast, depressive symptoms “can impair judgment and stability” and include experiencing difficulties with concentration and attention and “self-destructive behavior.” *Id.* To demonstrate rehabilitation or reformation of Bipolar Disorder, which is a lifelong condition, the Psychologist opined that the Individual should obtain effective treatment that typically includes “medication and psychotherapy.” *Id.* at 121. For ADHD, the Psychologist opined that the Individual should take a “stimulant medication,” “participat[e] in cognitive behavior therapy,” or both. *Id.* He opined that significant benefit could be achieved from ADHD treatment after four to twelve weeks, depending on the treatment the Individual pursues consistent with the recommendation. *Id.*

The Individual testified that he was currently taking medication for his ADHD and Bipolar Disorder. *Id.* at 37–38. He testified that he began taking Adderall for his ADHD in June 2023, which helps him focus and be more productive. *Id.* at 44, 55. He testified that he is under the care of a new physician who prescribed the Adderall. *Id.* at 54. As for the medication to treat his Bipolar Disorder, the Individual testified that he had continued to use the medication prescribed by his old physician, but he independently decided to take his medication once a day to avoid feeling drowsy even though he is supposed to take it twice a day. *Id.* at 38–39, 42, 54, 56. He testified that the medication helps “balance out [his] moods.” *Id.* at 40. He also testified that he is not currently feeling suicidal and does not have thoughts of engaging in infidelity. *Id.* at 40–41. He testified that while he experiences feeling very depressed at times, he does not experience “dark thoughts” and the periods are not long. *Id.* at 42. The Individual testified that his wife is supportive of his treatment, they do not have as many arguments about his need to take medication, and she is happy and proud of his effort. *Id.* at 58. The Individual’s medical records demonstrate that he first began care with his new physician in August 2023. Ex. D.

Regarding his employment history, the Individual testified that he was fired by Employer 3 over twenty years ago in the year 2000 because he “got angry” and punched a glass window. Tr. at 46–47. Then, in 2018, he left Employer 2 due to a personality conflict with his supervisor. *Id.* at 50. The Individual testified that his supervisor would demand to know his location at all times and got upset when the Individual used the restroom. *Id.* at 50. He also testified the supervisor would have issues with the Individual helping other co-workers with tasks. *Id.* at 51. Finally, in 2019, he was disciplined by Employer 1 because he accidentally damaged a forklift by driving it into a garage door while rushing to move it to a different location. *Id.* at 48–49. As a result, he received a “write-up.” *Id.* at 49.

The Psychologist testified that the Individual is very forthcoming. *Id.* at 70. The Psychologist testified that with Bipolar Disorder “things can go along and . . . your mood can be fairly flat, normal. And then you’ll have these dramatic changes, these episodes.” *Id.* at 72. The Psychologist also testified that ADHD is a neurological condition that negatively impacts the ability to listen, pay attention, remember information, and follow procedures. *Id.* at 73. Thus, the Psychologist testified that individuals with ADHD “tend to be a little bit more impulsive or significantly more impulsive.” *Id.* at 73. The Psychologist also noted that the medical records indicated that the Individual had been prescribed medication to treat his ADHD in January 2024, which differed from Individual’s testimony of starting earlier. *Id.* at 82. The Psychologist testified that given the recency of the Individual’s use of ADHD medication, he could not give an opinion on whether the condition was under control or whether it had a low probability to affect the Individual’s judgment and reliability. *Id.* at 84.

The Psychologist also testified that individuals may experience breakthrough symptoms of their Bipolar Disorder at any time, even if they are compliant with their treatment regimen. *Id.* at 73–74. The Psychologist testified that the best practice for treating Bipolar Disorder includes both medication and therapy. *Id.* at 77. The Psychologist testified that he would continue to recommend that the Individual be compliant with his medication regime and receive therapy treatment, “particularly cognitive behavior therapy” *Id.* The Psychologist explained that therapy can help the Individual and family learn to recognize breakthrough symptoms and help the person seek early medical care. *Id.* The Psychologist testified that even though a person could be making progress they may have a “state change that’s no fault of their own.” *Id.* at 80. The Psychologist testified that relapse of the Individual’s Bipolar Disorder symptoms “can happen virtually any time. And it’s very common to have relapse.” *Id.* at 89.

V. ANALYSIS

A. Guideline E Considerations

Conditions that can mitigate security concerns based on personal conduct include the following:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;

- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

I conclude that ¶ 17(c) applies to resolve the Guideline E concerns. First, I find that the offenses cited by the SSC are relatively minor. The record reflects that the Individual broke a window over twenty years ago while working for Employer 3. Eighteen years later in 2018, he worked for a supervisor that, by his report, was difficult and unreasonably demanding. The record also reflects that Individual decided to leave the position as a result, which, even when considered with the other evidence cited in the SSC under Guideline, is a minor incident that does not provide evidence of dishonesty or rule violations. And the record does not include evidence to dispute his description of his supervisor at Employer 2. Finally, a year later in 2019, he received a single written warning from Employer 1 for damaging a piece of equipment. The evidence in the record demonstrates that it was a mistake, and even if he had been reprimanded for it, it appears to be a minor incident that happened approximately three years before the hearing date. This same evidence demonstrates that a significant period of time has passed between the 2000 rule violation and the 2019 write up, and I therefore conclude that the conduct did not occur frequently. Accordingly, I find that the behavior is unlikely to recur and does not cast doubt on the Individual's current reliability, trustworthiness, or good judgment.

B. Guideline I Considerations

Under Guideline I, the following relevant conditions can mitigate security concerns associated with a psychological condition:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

I find that none of the above conditions apply to resolve the Guideline I concerns. Because I rely upon much of the same evidence in analyzing all five of the above mitigating factors, the following analysis addresses them together. While ADHD is a condition readily controllable with treatment, the record is unclear whether the Individual has been receiving treatment for seven months or less than a month, the latter being reflected in his medical records. The Individual's medical records indicate that he began treatment with the new physician in August 2023, which is two months after the Individual testified that he began using Adderall prescribed by this new physician to treat his ADHD. In light of this inconsistency, I find it more likely that the medical records provide an accurate account of when the Individual began taking ADHD medication than the testimony provided by the Individual. Furthermore, the Individual has not received counseling to address his ADHD. And the Psychologist did not give a positive prognosis or opine that the Individual's ADHD is under control or has a low probability of recurrence.

Regarding the Individual's diagnosis of Bipolar Disorder, I find that while the Individual has been taking medication for the condition, he has not done so in accordance with treatment recommendations. The Individual's testimony demonstrates that he is using his medication in a manner inconsistent with the direction of his physician by taking it once a day instead of twice a day. Furthermore, the Individual has not engaged in counseling despite it being suggested by his former physician, and the record does not contain an opinion from the Individual's former or current physician regarding the Individual's progress or prognosis. Finally, the Psychologist did not provide a positive prognosis given the unpredictability of breakthrough Bipolar Disorder symptoms even when following best treatment practices, which include both medication and counseling or therapy. I therefore conclude that the Individual has not resolved the concerns associated with his Bipolar Disorder. Accordingly, I conclude that he has not resolved the concerns that derive from his history of depressed mood and suicidal ideation, impulsivity, and inconsistent work history given these behaviors are related to his Bipolar Disorder, namely, experiencing episodes of mania and depression episodes.

Accordingly, I conclude that none of the mitigating conditions under ¶ 29 apply to resolve the Guideline I concerns.⁴

⁴ In reaching my conclusion, I find that the Individual's alleged "inconsistent" work history that includes "resignations, disciplinary actions, personality conflicts, and termination" are more appropriately addressed in the Guideline E

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E and I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the Guideline E security concerns. However, I conclude that the Individual has not put forth sufficient evidence to resolve the Guideline I concerns set forth in the SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

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

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals

analysis, *supra*. Ex. 1 at 2. To the extent these work-related incidents result from, or provide evidence of, the Individual's diagnosed conditions, they are appropriately addressed through my Guideline I findings related to those conditions.