

conduct and arranged for the DOE psychologist to evaluate her a second time. He diagnosed her at that time with Bipolar I Disorder, most recent episode manic with psychotic features.

After reviewing the individual's personnel security file, the LSO informed the individual in a January 2015 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).² The Notification Letter also informed the individual that her security clearance was being suspended and that she was entitled to a hearing before an Administrative Judge in order to resolve the security concerns.

The individual requested a hearing on this matter. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the individual presented her own testimony and that of four other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted 14 numbered exhibits into the record, and the individual submitted ten exhibits, which I labeled Exhibits A through J. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or letter designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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 her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may

² Criterion H concerns information that an individual suffers from "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion L relates to information that shows that the individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend 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).

be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

In support of its security concerns under Criterion H, the LSO relies on the opinion of the DOE psychologist, who determined that the individual is properly diagnosed with Bipolar I Disorder, a mental condition that, in his opinion, causes or may cause a significant defect in her judgment and reliability. Furthermore, the LSO cites the individual's behavior with regard to the country music celebrity, her bipolar diagnoses by two psychologists, her sending messages concerning the performer to co-workers even after being requested to desist from doing so, and her work suspension for doing so as evidence that she has engaged in unusual conduct that tends to show that she is not honest, reliable, or trustworthy, which raises additional security concerns under Criterion L.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and L. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness, as in the present case, where a duly qualified mental health professional has stated so. *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 (Adjudicative Guidelines) at Guideline I. In addition, conduct involving questionable judgment can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. *Id.* at Guideline E.

IV. Findings of Fact

In May 2008, after suffering a nighttime bout of fast heartbeat, nervousness, and anxiety, the individual sought medical assistance and was diagnosed, over the course of the following days, with several different conditions. Tr. at 73; Exs. 7, 8. The nighttime event apparently had a number of causes, including the recent termination of a friendship she had with the father of a country music celebrity whom she hoped to befriend. Tr. at 73, 144. After her hospitalization, the individual began receiving treatment from a psychologist. *Id.* at 34, 177. In August 2008, she notified her supervisor that she believed her life was in danger and that she was being followed. *Id.* at 127-28; Ex. 10. In November 2008, the LSO interviewed the individual and obtained a report from her psychologist, who stated that the individual was suffering from Bipolar I Disorder, with impaired judgment related only to her delusions regarding the country

music celebrity. Exs. 6, 13. A DOE consultant psychologist evaluated the individual in August 2009, and found that she was “credibly diagnosed with Bipolar II Disorder,” but concluded that the condition did “not affect her judgment or reliability in any way currently.” Ex. 4 at 5.

In January 2013, the individual ended a tumultuous relationship with a neighbor, who then harassed her in various manners and was ultimately served with an Order of Protection. Ex. 12 at 150; Exs. G, I. He violated that Order and was arrested for stalking the individual. Ex. I at 3. From February 2013 through early 2014, the individual sent more than 100 text and e-mail messages regarding the country music celebrity to three co-workers, one of whom is her team leader. At one point, the team leader asked her to stop sending him e-mails and texts about the celebrity. Tr. at 213-15; Ex. 11. Because she continued to send messages after being requested to stop, she was suspended for insubordination resulting from her failure to cease disruptive behavior in the workplace. Exs. 9, 10.

In April 2014, the DOE psychologist evaluated her a second time. In his evaluative report, the DOE psychologist expressed his opinion that the individual was suffering from a paranoid delusion that the country music celebrity was communicating with her through the radio and that she and the celebrity would one day be united. He stated that this delusion “and frankly psychotic thinking” were an exacerbation of the individual’s Bipolar Disorder, brought on by the stresses and upset that followed the ending of her actual relationship with her neighbor. He concluded that, though some individuals are able to function in their daily work while maintaining their delusion as “encapsulated” in their private lives, the individual’s stability was vulnerable and his concerns about her judgment and reliability extended into both her work and personal lives. He diagnosed her with Bipolar I Disorder, most recent episode manic with psychotic features. Ex. 3 at 4-5.

At the hearing, the individual recounted in great detail the events that underlay the LSO’s security concerns. In doing so, she challenged the factual bases of several of the concerns listed in the Notification Letter, contending in some instances that the LSO may have misunderstood or misinterpreted her statements during their Personnel Security Interviews (PSIs) with her. The factual summary presented in the above paragraphs represents the uncontroverted history of the salient events surrounding the individual’s behavior that raised the security concerns. The individual also testified that, despite her growing dissatisfaction with her treating psychologist and her ultimate decision to seek treatment elsewhere, she always remained compliant with her medication regimen. Tr. at 187-203. She further stated at the hearing that she recognized that her behavior was at times inappropriate, such as when she continued messaging her co-workers about the country music celebrity after being told to stop, and that she had apologized sincerely to those she had wronged. *Id.* at 216, 251-52. Finally, she pointed out that she has not engaged in any behavior of concern to the LSO in a full year. *Id.* at 213, 257.

Four witnesses testified on the individual’s behalf. A close friend of the individual for more than ten years testified at the hearing. She confirmed the severity of the harassment the individual endured from her ex-boyfriend. *Id.* at 17, 25-29. As a co-worker of the individual for several years, the close friend also attested to the individual’s excellent work ethic and her concern for others both in and out of work. *Id.* at 20. A nurse practitioner who has been managing the

individual's medications for the past three months also testified. Although she did not have access to the individual's treatment records, she was working with the individual to reduce her medications, as she had observed no manifestations of psychotic or bipolar behavior. *Id.* at 75, 79, 85. A police department employee corroborated the significant stress the individual's ex-boyfriend's harassment placed on her. *Id.* at 112. Finally, a long-time friend testified to the strain that the harassment and medical problems had placed on the individual and the ensuing anxiety that she had observed in their phone calls. *Id.* at 168.

After hearing the testimony of all the other witnesses, the DOE psychologist rendered an opinion regarding the individual's mental health status as of the date of the hearing. He described the individual as emotionally labile, that is, subject to mood swings well beyond the normal range. *Id.* at 283, 323-24. According to the DOE psychologist, when the individual is most stable, she is able to talk about being inspired by the country music celebrity's artistic creations, which have given her comfort when she faced sadness and difficulties in her life. However, when she is most unstable, she has described, to both her treating psychologist and to the DOE psychologist, hearing songs in which the performer is communicating directly to her through the radio. *Id.* at 275-76. The possibility of creating music in collaboration with the country music celebrity, when she is stable, becomes, when she is not, a pre-occupation with a union that is fated to be. *Id.* at 276-77. The DOE psychologist also stated that when the individual is most unstable, she displays unrealistic, aspirational, psychotic thinking patterns that lead to delusions. She sees patterns and connections between facts where others do not, which he labeled a thought disorder, and which constituted mania. *Id.* at 277, 282, 323. He acknowledged that the ex-boyfriend's harassment created terrible stress in her life, and may have caused a manic episode. *Id.* at 282. But he noted that she did not employ bad judgment when she was dealing with the harassment and the ensuing litigation; her bad judgment that arose from deluded thinking related to the country music celebrity. *Id.*

The DOE psychologist concluded that, within a reasonable degree of psychological certainty, the individual continues to suffer from a thought disorder. When she is feeling supported and there are few stressors in her life, she keeps her thoughts in perspective; however, when she is in a fearful state and most vulnerable, she "privileges her own thinking over what other people would say is reality." *Id.* at 289. Furthermore, he testified that it is difficult to treat a person, such as the individual, who, when vulnerable, believes her thinking to be true and realistic when it is not. *Id.* at 286. Medications can stabilize mood swings, but have a therapeutic effect on personalized, idiosyncratic thinking in perhaps one-third of all cases, and apparently not for the individual. *Id.* at 286-87. In the individual's case, treatment is further hampered because her current treatment provider is relying solely on the individual's self-report, as she has not seen her patient's treatment records. *Id.* The DOE psychologist acknowledged the fact that the individual has had a successful past year, not acting on unreliable thoughts. *Id.* at 294. Nevertheless, he maintained that the individual suffered from a thought disorder that manifests itself during the manic mood swings of her Bipolar Disorder.

V. Analysis

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 work suspension, the events that led up to it, and other questionable activities occurred when the individual was suffering from delusional thinking associated with manic episodes of her Bipolar Disorder. 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 recur. 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.

Given the evidence submitted in this case, I find that the individual has not resolved the Criterion H security concerns raised by her Bipolar Disorder. Much to her credit, I find that the individual was extremely straightforward in her testimony, particularly when she admitted to past behavior that now embarrassed her and that she now recognized as inappropriate. She argued convincingly that she was compliant with all medication prescribed by her treating professionals, and that she has not had a manic outbreak in the past year. This evidence, though favorable to the individual, is insufficient to mitigate the LSO's security concerns in this case. In his opinion as a mental health expert, the DOE psychologist maintained that the individual's Bipolar Disorder was not in control, despite the good year she had experienced. When asked what the individual might have presented to convince him that her condition no longer affects her judgment and reliability, the DOE psychologist stated that she had not yet gained insight into her illness, through which she would recognize her "vulnerability to becoming paranoid" and interpreting "the world in ways that other people wouldn't interpret." Tr. at 306.

Guideline I of the Adjudicative Guidelines offer objective guidance concerning mitigation of security concerns arising from psychological conditions. The five mitigating factors presented in that Guideline by no means exclude the consideration of other positive factors, but they nevertheless do merit serious reflection. The first factor is "the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan." Guideline I at ¶ 29(a). The DOE psychologist testified that the individual's thought disorder is not particularly responsive to medication, which is the only form of treatment she is receiving at this time. While the individual has, to her credit, "entered a counseling or treatment program," it is not clear that that program can offer the treatment necessary for her illness, and the record contains no "favorable prognosis by a duly qualified mental health professional." *Id.* at ¶ 29(b). Contrary to the third mitigating factor, the DOE psychologist's prognosis was not that the "individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation." *Id.* at ¶ 29 (c). Nor was there any support for the remaining factors: that "the past emotional instability was a temporary condition . . . , the situation has been resolved, and the individual no longer shows signs of emotional instability," *id.* at ¶ 29(d), and "there is no indication of a current problem." *Id.* at ¶ 29(e).

After considering these five factors, I have determined 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 (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 recur if the individual is unfortunate enough to suffer another manic episode in the future.

VI. 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.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: May 7, 2015