

The LSO presented the testimony of the DOE psychologist who had evaluated the individual. *See* Transcript of Hearing, Case No. PSH-18-0051 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8 (hereinafter cited as “Ex.”). The Individual submitted 14 exhibits, marked as Exhibits A through N.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Guideline I, Psychological Conditions, provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Guideline I at ¶ 28. Guideline I further provides that “an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness” may raise a security concern and be disqualifying. Guideline I at ¶ 28(b). The LSO alleges that a DOE Psychologist evaluated the Individual and concluded that her psychological condition remained unstable and could impair her judgment, reliability, stability, and trustworthiness. Ex. 1 at 1. Accordingly, these allegations adequately justify the LSO’s invocation of Guideline I in the Notification Letter.

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), 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 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 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 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. *See* 10 C.F.R. § 710(c) (factors to be considered by Administrative Judge in making a decision as to an individual’s eligibility to possess or retain a security clearance).

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

The Individual has a history of psychological disorders going back over twenty years. During reinvestigation to continue holding her security clearance, the Individual revealed to investigators that she had been suffering from pseudo-seizures for over a year.² Ex. 5 at 2. Medical records indicated that the Individual had been previously diagnosed with Obsessive-Compulsive Disorder, Attention Deficit/Hyperactivity Disorder, Bipolar I Affective Disorder (Bipolar I), Conversion Disorder with Pseudo-Seizures, Adjustment Disorder, and Mild Anxiety and Depression, among other diagnoses. Ex. 5 at 2; Ex. 6 at 10. Following a PSI, the Individual was referred to a DOE Psychologist for evaluation. Ex. 4. The Psychologist conducted a series of tests, as well as an in-person evaluation of the Individual. The Psychologist believed that the Individual may suffer from Bipolar II Affective Disorder (Bipolar II) and not Bipolar I since she found no evidence that the Individual had ever experienced a manic episode.³ Ex. 6 at 11. She concluded that the Individual had made progress with her pseudo-seizures, though she still experienced them from time to time. Ex. 6 at 11. Nonetheless, the Psychologist opined that the Individual remained symptomatic and had experienced severe reoccurrences and relapses of many of the diagnosed psychological problems. Ex. 6 at 10. She also opined that the Individual's "presentations of dissociation, emotional and behavioral lability, appearance of inconsistent sense of self, susceptibility to stress-induced psychological and physical symptoms, insufficient coping and defense mechanisms, and interpersonal feelings of persecution/mistrust, form a constellation of symptoms which could impair her judgment, stability, reliability and trustworthiness." Ex. 6 at 11.

At the hearing, the Individual presented the testimony of several character witnesses. Each testified to her good character and opined that she did not appear to suffer from psychological symptoms. Tr. at 17–18, 21, 33–35, 43–47, 70–73, 79–80, 99–102.

The Individual's psychotherapist testified that the Individual was much improved since she began working with him over a year and a half prior to the hearing. Tr. at 160. He stated that he had used several modalities, including some that have not been subject to peer review or empirical testing, to help the Individual uncover and process suppressed memories. *Id.* at 110, 122, 132–33. He stated that the Individual self-reports fewer seizures. *Id.* at 128. He believes his therapy has improved the Individual's life and that "[s]he's doing very, very well." *Id.* at 123. However, the psychotherapist testified that, though the Individual had last seen him a week before the hearing, her previous appointment had been three months earlier and her sessions had been sporadic since January 2018. *Id.* at 130–31.

² The Individual described her pseudo seizures as events where her body shakes and she feels nauseated. Ex 5 at 2. These pseudo seizures are related to the Individual's migraine headaches which can be triggered by stress and lack of sleep. Ex. 5 at 2. As of the date of the hearing, the Individual testified that these pseudo seizures are much less frequent and severe than at the time of her security clearance reinvestigation. Tr. at 261. As of the hearing, the Individual report having had only three pseudo seizures in 2018, all of them mild. *Id.* at 261.

³ However, the Psychologist noted that, in her opinion, the Individual did not meet the all of the criterion for a diagnosis of Bipolar II Affective Disorder. Ex. 6 at 11.

The psychotherapist testified that he intentionally underdiagnoses his patients so that they can avoid the external consequences of their conditions. Tr. at 133–34. In this regard, the psychotherapist testified that when he diagnosed the Individual, he agreed with the Psychologist’s Bipolar II diagnosis but, in order to prevent problems in her life, diagnosed the Individual with the less serious condition of Adjustment Disorder instead. *Id.* at 133–34.

The Individual’s EAP counselor testified that he had seen the Individual for seven sessions. Tr. at 166. The counselor testified that he worked with the Individual on skill building, rather than therapy, including deep breathing coping skills. *Id.* at 177. In January or February of 2018, he referred the Individual to a doctor for treatment of her Bipolar illness. *Id.* at 181–82. He believed the Individual had, by the hearing date, been on medication prescribed by the referred doctor for several months. *Id.* at 183.⁴

The Individual testified that her seizures are much calmer now and that she had only had three in 2018. Tr. at 261. They lasted only a matter of seconds and she was able to speak over the convulsions. *Id.* at 234–35. She is physically active, taking walks and going to the site fitness center while on breaks during the workday. *Id.* at 215. She testified that she has not had blackouts at work. *Id.* at 224. She testified to her belief that her PSI was videotaped and that a hypnotherapist had touched her inappropriately during a session. *Id.* at 245–46, 253. She testified that she was taking her medications as prescribed. *Id.* at 265, 272. She further testified that she felt well-adjusted and that her life was going “wonderfully.” *Id.* at 274.

The Individual presented testimony from an independent psychologist who had evaluated her for about seven hours over multiple sessions. Tr. at 187. The Individual’s psychologist testified that the Individual had made good progress over the previous couple of years and that she agreed with the DOE Psychologist’s diagnosis of Bipolar II. *Id.* at 191. She testified that Bipolar II is a lifelong condition. *Id.* at 207. The Individual’s psychologist had no concerns about the Individual’s reliability, however, she did testify that a good prognosis was dependent on the Individual’s continuing to attend therapy and take her medication as prescribed. *Id.* at 195. Without those factors, the prognosis was more guarded. *Id.* at 201. She also testified that the Individual would need to remain in compliance with those conditions for six consecutive months to demonstrate the stabilized mood required for a good prognosis. *Id.* at 200–01.

The DOE Psychologist testified that, after hearing all of the day’s testimony, she stood by her assessment of the Individual as having symptoms of Bipolar II.⁵ Tr. at 290. She acknowledged that the Individual had worked hard to overcome her psychological challenges. Tr. at 288. However she was unable to give the Individual a good prognosis as of the hearing date:

⁴ The record indicates that the Individual began seeing the doctor for pharmaceutical treatment of her Bipolar illness on July 23, 2018. Individual’s Closing Statement at 3; Ex. N at 2–3.

⁵ The Individual’s manner during her own testimony aligns with symptoms of Bipolar II described in the DOE Psychologist’s report. Her testimony bounced from topic to topic and was delivered in rapid, high pitched speech. *Cf.* Ex. 6 at 9. On several occasions, the court reporter attempted to pause the Individual’s testimony so she could ask her to slow her speech. *Id.* at 231, 243. *See also id.* at 264, 283. At one point, the court reporter could not pause the Individual’s flow of speech without raising her voice sharply. The Individual’s mood was excited and cheerful, despite the serious nature of the topics she was discussing.

I wish I could say the four to six weeks on the medication is sort of good enough, but I can't. It's just—it's like sometimes with the alcohol issues or whatever, you really have to see over a longer period of time to be able to say this is a—this person really has a good prognosis. I could anticipate or speculate, but I probably shouldn't. So I won't.

Id. at 289. She did, however, testify that the Individual's prognosis could be fair to good if she continued with a treatment plan that included medication and therapy. *Id.* at 285–88, 290–91. While the DOE Psychologist did not disagree with the Individual's psychologist that six months of treatment may be enough to demonstrate stability for a good prognosis of the Individual's Bipolar illness, she testified that she would prefer a year of consistent treatment for a good prognosis. *Id.* at 291.

V. ANALYSIS

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

Guideline I identifies five conditions that can mitigate security concerns arising from psychological conditions, three of which apply to the present case. Section 29(a) provides that mitigation might result when “the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan.” Section 29(b) provides that mitigation might result when “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.” Section 29(c) provides that mitigation might result when a “recent opinion [is rendered] 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.” Section 29(d) provides that mitigation might result when “the past psychological/psychiatric condition was temporary, the situation has been resolved and the individual no longer shows indications of emotional instability” Finally, Section 29(e) provides that mitigation might result when “there is no indication of a current problem.” My discussion of the relevant factors is given below.

A. Section 29(a)—Consistent Compliance with Treatment Plans

The Individual is currently medicated for Bipolar II, but did not begin treatment for that condition until one month before her hearing, even though she had been referred for treatment over six months prior to establishing care with the treating physician. The Individual has not been regularly attending sessions with her psychotherapist. Both psychologists wanted to see at least six months

of treatment, including medication and psychotherapy, to show stability; one wanted a year. It is simply too soon to say that the Individual has demonstrated ongoing and consistent compliance with her treatment plan.

B. Sections 29(b) and 29(c)—Mental Health Professional Opinions

The Individual voluntarily entered psychotherapy and sought treatment for her pseudo seizures. However, that treatment had not been regular since January 2018. As of the hearing date, the Individual had seen her psychotherapist once in the previous few months. The Individual's psychologist stipulated that a good prognosis was dependent on continued treatment with therapy and medication for at least six months. At the time of the hearing, the Individual had not established that she was attending therapy regularly and she had not been medicated for the six months required for her psychologist to find that the Individual had a good prognosis. The DOE Psychologist also could not give the Individual a favorable prognosis at the time of the hearing. She could not find that the Individual's symptoms were under control or in remission.

The Individual's psychotherapist admitted to modifying his patients' diagnoses for the purpose of preventing adverse consequences in their lives. He admitted to doing this for the Individual by diagnosing her with a condition that is less serious than the one he truly believed afflicted her. While I understand his motives in doing this, his credibility is lessened and, therefore, I cannot afford significant weight to his testimony that the Individual is doing well. The EAP counselor did not offer a prognosis for the Individual or an opinion on the state of her Bipolar illness.

Upon consideration of the above evidence, I cannot find that the Individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional. Nor can I find that a duly qualified mental health professional employed by the U.S. Government has opined that the Individual's condition is under control or in remission.

C. Section 29(d) and 29(e)—Resolution or No Current Problem

Just as the character witnesses described, the Individual presented as a kind, optimistic person who is committed to improving her mental health. However, as the security concerns at issue here are medical in nature, I cannot afford significant weight to their testimony. Further, the Individual's psychologist testified that the Individual suffers from a lifelong condition and that the Individual cannot yet be considered stabilized. Therefore, while I find that the character witnesses attested to the Individual's good character, this evidence does not outweigh the significant evidence that the Individual has a significant psychological illness that raises a security concern.⁶

VI. CONCLUSION

The Individual has worked hard to overcome extraordinary difficulties and to improve her life. She appears truly committed to this process and her early efforts thus far are encouraging. Unfortunately, as described above, those efforts do not yet rise to the level of mitigation under the

⁶ I have also considered the factors listed in 10 C.F.R. § 710.7(c) in my deliberation. I find that none of these factors sufficiently mitigate the significant security concerns raised by the Individual's psychiatric history as described in the Notification Letter,

Adjudicative Guidelines. Thus, for the foregoing reasons, I find that the Individual has not mitigated the security concerns raised under Guideline I.

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline I of the Adjudicative Guidelines. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual 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.
Administrative Judge
Office of Hearings and Appeals