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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: May 21, 2021	)	Case No.: PSH-21-0068
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Issued: August 26, 2021

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**Administrative Judge Decision**

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Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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."<sup>1</sup> 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 employed by a DOE contractor in a position that requires him to hold a security clearance. On November 7, 2019, the Individual signed a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 9 at 65.<sup>2</sup> The Individual disclosed on the QNSP that he: resigned from a job in 2017 after being told that he would be fired for committing a safety violation; used marijuana on an irregular basis from 2001 until 2017; failed to timely file federal personal income tax returns or pay personal income taxes for the 2011, 2012, and 2016 tax years; fell into delinquency on child support payments; had two routine financial accounts referred to collections; and was arrested and charged with the following offenses:

- (1) Misdemeanor Burglary of a Building (2000);

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<sup>1</sup> 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.

<sup>2</sup> The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibit. For example, the first page of Exhibit 2 is marked as page 2. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

- (2) Misdemeanor Theft (2000);
- (3) Misdemeanor Possession of Marijuana (2001);
- (4) Evading Arrest (2002);
- (5) Misdemeanor Driving While Intoxicated (DUI) (2007);
- (6) Misdemeanor DUI (2009);
- (7) Felony Theft (2012).

*Id.* at 17, 46–54, 56–62.

On December 19, 2019, an Office of Personnel Management (OPM) investigator interviewed the Individual as part of OPM’s investigation of his eligibility for access authorization. Ex. 10 at 83. During the interview, the Individual admitted that he:

- (1) Owed \$1,979 to a former landlord;
- (2) Falsely indicated on the QNSP that he resigned after being told that he would be fired for a safety violation when he was actually fired for a positive drug test after he was involved in a workplace accident;
- (3) Intentionally failed to disclose his termination for a positive drug test when applying for employment with the DOE contractor;
- (4) Is ineligible for rehire with five employers for whom he worked from 2015 to 2017 for failing to give adequate notice before leaving the positions;
- (5) Incorrectly indicated on the QNSP that he was charged with Misdemeanor Burglary in 2000 when he was in fact charged with and convicted of Felony Burglary;
- (6) Was incarcerated for violating the terms of his probation in connection with his Misdemeanor Theft offense in 2000;
- (7) Consumed ten beers per sitting when drinking alcohol and “drinks to get drunk;”
- (8) Used marijuana on a quarterly basis from 1999 to August 2017;
- (9) Owed \$15,000 to \$20,000 in unpaid federal personal income taxes; and,
- (10) Failed to disclose seven delinquent financial accounts on the QNSP, including the debt owed to the landlord.

*Id.* at 83–89.

On December 23, 2019, the Individual e-mailed the OPM investigator to disclose additional information. *Id.* at 90. During an investigatory interview on January 7, 2020, the Individual disclosed to the OPM investigator that he failed to disclose on the QNSP that he had invested \$15,000 in a foreign business. *Id.* at 91. The Individual represented that he did not disclose this information on the QNSP because he “misunderstood the question” and “was about to cash out.” *Id.* In a subsequent interview on January 21, 2020, the Individual admitted that he had made a profit of approximately \$2,000 from a previous investment in a foreign business which he did not disclose during the interview on January 7<sup>th</sup> because he “did not think about it.” *Id.* at 92–93.

In May 2020, the Local Security Office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the derogatory information uncovered by OPM’s investigation. Ex. 6. In his response, the Individual denied that he had “lied” when he failed to disclose that he was terminated for a positive drug test on the basis that he disclosed that he had committed a safety violation and was

merely “vague” about the full circumstances. *Id.* at 5–6. The Individual did not disclose his termination for the positive drug test to the DOE contractor because he “did not think it would matter.” *Id.* at 6. The Individual denied intentionally failing to disclose having been convicted of Felony Burglary and said that he believed that he was convicted of a misdemeanor. *Id.* at 8.

The Individual admitted that he only disclosed one DUI to the DOE contractor on the basis that he believed that the other had been expunged from his record and that he need not disclose any offenses that were not “on [his] permanent record.” *Id.* at 9. The Individual represented that he did not disclose all of his delinquent financial accounts on the QNSP because his credit report reflected that they were closed, and he assumed that he need not disclose such accounts. *Id.* at 10. The Individual said he did not disclose his foreign investments on the QNSP because he perceived the investments to be “a private financial matter[] and [he] was apprehensive to disclose [them].” *Id.* The Individual represented that he did not disclose the profit he earned from one of the investments during the January 7, 2020, interview because “the investigator did not ask [him].” *Id.* at 11.

On September 21, 2020, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a clinical evaluation. Ex. 7 at 3. The Individual indicated that he consumed alcohol once per month or less and became intoxicated once per year or less. *Id.* Alcohol testing requested by the DOE Psychologist provided evidence that the Individual neither consumed alcohol for at least three days nor consumed significant quantities of alcohol for at least three weeks prior to the clinical interview. *Id.* at 4.

Following the clinical interview, the DOE Psychologist issued a Psychological Assessment (Report) in which he opined that the Individual did not have an alcohol use disorder or habitually or binge consume alcohol to the point of impaired judgment. *Id.* at 11. However, the DOE Psychologist concluded that the Individual’s “history of illegal and antisocial behaviors, irresponsibility, career instability[,] and generally poor decision-making create concern . . . .” *Id.* The DOE Psychologist opined that the Individual would have met the diagnostic criteria for Antisocial Personality Disorder (APD) under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)* if he displayed evidence of a conduct disorder before age 15, which the DOE Psychologist did not confirm during the clinical interview. *Id.* at 11–12. Although he did not diagnose the Individual with APD due to his uncertainty about the Individual’s conduct before age 15, the DOE Psychologist concluded that the Individual had a personality disorder or personality disorder traits that could impair his judgment, reliability, stability, or trustworthiness. *Id.* at 11–12. The DOE Psychologist opined that the Individual’s prognosis was “fair,” and noted that personality disorders are “difficult to change without high levels of motivation and commitment toward improvement.” *Id.* The DOE Psychologist did not provide recommendations for the Individual to follow to demonstrate rehabilitation or reformation. *Id.*

The LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline I (Psychological Conditions) of the Adjudicative Guidelines. *Id.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted ten exhibits (Ex. 1–10). The Individual submitted ten exhibits (Ex. A–J).<sup>3</sup> The Individual testified on his own behalf and DOE presented the testimony of the DOE Psychologist. Hearing Transcript (Tr.) at 3.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC asserted that the DOE Psychologist “concluded that while [the Individual] does not meet full criteria to make a diagnosis of APD, his history of illegal and antisocial behaviors, irresponsibility, career instability and generally poor decision-making are conditions that can impair his judgement, stability, reliability or trustworthiness.” Ex. 1. The opinion of the DOE Psychologist that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

## 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 Dep’t 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.

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<sup>3</sup> The Individual’s exhibits A through G are contained within DOE’s Exhibit 2. This Decision will cite to Exhibit 2 when referring to Individual’s exhibits A through G.

#### IV. HEARING TESTIMONY

The Individual testified that he had a positive work record with the DOE contractor and received special recognition for his excellent performance. Tr. at 11–12; *see also* Ex. 2 at 27–28 (establishing that the Individual received a “Special Recognition Award,” including extra compensation, from the DOE contractor). The Individual testified that his salary was sufficient to meet all household expenses and that he and his wife were financially stable. Tr. at 13, 21. The Individual contrasted his current stable homelife with his childhood, in which he was abandoned by his parents at age 15 and resided alone until he was 17 when his mother returned to his childhood home. *Id.* at 12–15. The Individual represented that his difficult childhood led him to commit criminal conduct and make other poor decisions. *Id.* at 26–27.

The Individual testified that he changed his life significantly after meeting his wife in 2013. *Id.* at 14. He indicated that he has not consumed alcohol for over one year, his wife does not consume alcohol, and they do not keep alcohol in their home. *Id.* at 15. The Individual likewise indicated that he no longer used illegal drugs. *Id.* at 18. However, he admitted that he used marijuana “a handful of times” between 2013 and 2017. *Id.* at 18, 38. The Individual represented that the positive marijuana test in 2017 was a “catalyst” for his decision to stop using drugs. *Id.* at 41. The Individual indicated that he had no intention to return to using alcohol or illegal drugs. *Id.* at 18. He represented that he had disassociated from persons with whom he previously used alcohol and marijuana and established a new group of friends and associates.<sup>4</sup> *Id.* at 21.

The Individual represented that he had incurred numerous financial delinquencies and failed to timely file income tax returns prior to meeting his wife because he was “very poor at finances” and “it was not a priority . . .” *Id.* at 22, 27–28. The Individual represented that he was current on all debts, including child support, and that he made arrangements to have unpaid taxes deducted from his paycheck. *Id.* at 22, 28. He also claimed that he divested from his foreign investments in the summer of 2020. *Id.* at 28.

The Individual reported that he had met with a Licensed Clinical Social Worker (LCSW) to obtain “a rebuttal to [the DOE Psychologist’s] [R]eport.” *Id.* at 16; Ex. 2 at 11–19 (establishing that the Individual met with the LCSW for an evaluation on February 9, 2021, and that she did not diagnose him with any condition under the *DSM-5*). Prior to the evaluation, the Individual provided the LCSW with a copy of the SSC, his written rebuttal to the SSC, documents related to his employment with the DOE contractor, his resume, and letters of recommendation.<sup>5</sup> Tr. at 33. The Individual also testified that he has seen a Licensed Professional Counselor (LPC) for anxiety related to the adjudication of his security clearance. *Id.* at 35; *see also* Ex. 2 at 21 (indicating that the Individual attended five counseling sessions). The Individual testified that he sees the LPC bi-

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<sup>4</sup> OPM interviewed a friend of the Individual on January 15, 2020, who claimed to see the Individual two to three times weekly. *Id.* at 119. The friend disclosed that he and the Individual consumed beer together on a monthly basis and had, many years in the past, smoked marijuana together on a daily basis. *Id.* Thus, while the Individual’s testimony may have been truthful as of the date of the hearing, he had not disassociated from friends with whom he previously used drugs and alcohol during the period when OPM was conducting its investigation.

<sup>5</sup> The Individual initially testified that he provided the LCSW with the DOE Psychologist’s Report. Tr. at 32. However, he subsequently reviewed an e-mail that he sent to the LCSW to provide documents in advance of the evaluation and the Report was not attached to the e-mail. *Id.* at 33.

weekly, and that the LPC has provided him with guidance regarding family and life difficulties. Tr. at 16–17. The Individual indicated that the LPC had not identified any need for treatment beyond the anxiety and uncertainty related to the adjudication of his security clearance. *Id.* at 35.

The DOE Psychologist testified that the only barrier to his diagnosing the Individual with APD was the absence of information concerning the Individual’s symptoms prior to age 15. *Id.* at 57. The DOE Psychologist explained that one of the criteria for the diagnosis of APD is that a person must meet three or more diagnostic sub-criteria demonstrating a pervasive pattern of disregard for and violation of the rights of others. *Id.* at 103. The DOE Psychologist explained that behavior is pervasive for diagnostic purposes when a person repeats derogatory conduct without learning from their experience or changing their behavior, and that there is not a definitive period of time without recurrence of derogatory conduct that establishes that the person is in remission. *Id.* at 92, 97.

The DOE Psychologist found that the Individual met the first sub-criterion – failure to conform to social norms with respect to unlawful behavior – through his failure to file or pay taxes, failure to meet his child support obligations, and the DOE Psychologist’s “concerns that he could slip back” into unlawful uses of marijuana and alcohol. *Id.* at 93–95, 99; *see also* Ex. 7 at 7–9, 11 (reciting the facts the DOE Psychologist deemed relevant to the diagnosis). The DOE Psychologist indicated that the Individual met the second sub-criterion – deceitfulness – based on his untruthfulness during the review of his eligibility for a security clearance. Tr. at 99–100; *see also* Ex. 7 at 8–11 (reciting the facts relevant to the diagnosis). The DOE Psychologist also found that the Individual met the sixth sub-criterion – consistent irresponsibility – based on inconsistent work behavior and failure to honor financial responsibilities. Tr. at 58, 69–70; *see also* Ex. 7 at 9–11 (reciting the facts relevant to the diagnosis).

The DOE Psychologist testified that he remained confident in his diagnosis. Tr. at 102. He acknowledged that, if the Individual’s claims in the hearing were validated, he would have made significant progress and his prognosis could be elevated. *Id.* at 59, 62–63, 102. However, the DOE Psychologist opined that the “underpinnings of [the Individual’s APD] are manifested in his moderately high level of defensiveness and learned tendency to minimize or dodge the proverbial bullets when he perceives himself being in trouble.” *Id.* at 58–59. He added that “even in [the] hearing there seemed to be some vacillation based on whom the questions were coming from . . . .” *Id.* at 59. For example, the DOE Psychologist testified that the Individual’s commitment to abstain from alcohol was a change from his representation in the clinical interview that he would drink in moderation. *Id.* at 61–62. The DOE Psychologist expressed reservations as to the opinion of the LCSW because she did not have access to the Individual’s security file and therefore might not have known information that informed his diagnosis. *Id.* at 64–65. However, he acknowledged that his opinion might have been impacted by employment reviews and character statements related to the Individual that were in evidence but which he had not seen. *Id.* at 68, 76–78.

## **V. FINDINGS OF FACT**

The Individual did not disclose derogatory information on the QNSP as required, including that he was terminated from a position in August 2017 after a positive drug test, the frequency of his

marijuana usage,<sup>6</sup> numerous financial delinquencies, and his investments in foreign businesses. Ex. 9 at 17, 41–42, 58–62; Ex. 10 at 83–91. The Individual intentionally failed to disclose his investment in a foreign business during an interview with an OPM investigator. Ex. 6 at 10. The Individual also intentionally failed to disclose his termination for a positive drug test to the DOE contractor. Ex. 10 at 84 (indicating that the Individual intentionally failed to disclose this information to the DOE contractor because he was afraid that he would not be hired if he truthfully disclosed the circumstances of his termination). The Individual untruthfully denied this behavior in his response to the LOI. Ex. 6 at 5–6. The Individual also reported less frequent marijuana use at the hearing than he did to the OPM investigator. *Compare* Tr. at 18, 38 (indicating that he used marijuana “a handful of times” from 2013 to 2017) *with* Ex. 10 at 87 (indicating that he told the OPM investigator that he smoked marijuana on an approximately quarterly basis from 1999 until 2017) *and id.* at 120 (showing that the Individual’s wife told an OPM investigator that he smoked marijuana approximately monthly until his drug-related job termination in 2017).

The Individual’s responses to the QNSP, OPM’s background investigation, and the Individual’s responses to the LOI established that the Individual demonstrated consistent financial irresponsibility. Among other things, he failed to timely file Federal personal income tax returns or pay Federal personal income taxes, accrued an unpaid tax liability as large as \$20,000, failed to meet his child support obligations and accrued as much as \$17,000 in unpaid child support, and fell into delinquency on numerous consumer debts. Ex. 9 at 56–62; Ex. 10 at 87–89, 160–67.

The Individual demonstrated career instability from January 2014 to September 2018, during which period he worked for ten employers.<sup>7</sup> Ex. 9 at 14–24. Of these employers, the Individual was fired from one for cause after a positive drug test following a workplace accident and voluntarily left three others after working one month or less. *Id.*; Ex. 10 at 84. The Individual believes that he is ineligible for re-hire by at least five of his ten employers from 2014 to 2018 because he quit without giving notice or stopped attending work during the period covered by his notice. Ex. 10 at 84–85.

The Individual’s responses to the QNSP and LOI, as well as OPM’s background investigation, established that he has engaged in significant criminal conduct. He was: convicted of Felony Burglary in 2000, pleaded guilty to Misdemeanor Theft in 2000, arrested and charged with DUI in 2007, convicted of DUI in 2009, and arrested and charged with Felony Theft in 2012. Ex. 10 at

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<sup>6</sup> The Individual testified during the hearing that the OPM investigator incorrectly represented that he said that he used marijuana quarterly until 2017 during his interview and that he only used marijuana “a handful of times” from 2013 to 2017. Tr. at 18, 38, 42, 50. I assign greater evidentiary weight to the OPM investigator’s contemporaneous account of the interview in the interview summary than I do the Individual’s self-serving recollection of an interview that took place almost two years prior to the hearing. Moreover, the Individual’s wife told an OPM investigator that “prior to his termination [in 2017] the Individual smoke[d] marijuana on a monthly basis . . . .” Ex. 10 at 120. Thus, I find that the Individual told the OPM investigator that he used marijuana on a quarterly basis and falsely reported on the QNSP that he had never “use[d] marijuana on any regular basis.” Ex. 9 at 54.

<sup>7</sup> The Individual attributed his career instability to working in an industry in which employment is based on projects and employees commonly separate from their employers when a project is complete. Ex. 2 at 6, 12. This information does not fully explain the frequency with which the Individual changed employers because the Individual left numerous positions for reasons other than project completion, including leaving one position after two days on the job because his wife did not like the area in which the job was located, being fired for cause, and leaving multiple jobs after one month or less because he identified more attractive positions elsewhere. Ex. 9 at 14–21.

84–87, 134–58. He was arrested for other minor offenses between 2000 and 2012. *Id.* The Individual was not arrested between 2012 and the date of the hearing. However, he used marijuana and failed to pay taxes or meet his child support obligations after 2012. *Supra* p. 7.

The DOE Psychologist’s Report indicated that the Individual’s “history of illegal and antisocial behaviors, irresponsibility, career instability and generally poor decision-making” provided evidence of a personality disorder or personality disorder traits that constituted a condition “that can impair his judgement, stability, reliability or trustworthiness.” Ex. 7 at 11–12. The diagnostic criteria for APD under the *DSM-5* are:

- A. A pervasive pattern of disregard for and violation of the rights of others, occurring since age 15 years, as indicated by three or more of the following:
  - 1. Failure to conform to social norms with respect to unlawful behavior, as indicated by easily performing acts that are grounds for arrest.
  - 2. Deceitfulness, as indicated [by] repeated lying, use of aliases, [or] conning others for personal profit or pleasure.
  - 3. Impulsivity or failure to plan ahead.
  - 4. Irritability and aggressiveness, as indicated by repeated fights or physical assaults.
  - 5. Reckless disregard for [the] safety of self or others.
  - 6. Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations.
  - 7. Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.
- B. The individual is at least age 18 years.
- C. There is evidence of conduct disorder with onset before age 15 years.
- D. The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or bipolar disorder.

*Id.* at 13.

The DOE Psychologist determined that the Individual met each of the diagnostic criteria for APD, except for evidence of conduct disorder with onset before age 15 which the DOE Psychologist could not conclude was present based on the information he collected. *Id.* at 10–11. The DOE Psychologist determined that diagnostic criterion A was met by three sub-criteria: sub-criterion 1 was satisfied by the Individual’s history of unlawful behavior, including his pre-2012 offenses, failure to file tax returns, pay taxes, or meet his child support obligations; sub-criterion 2 was satisfied by the Individual’s untruthful and evasive responses to the QNSP, in interviews with OPM investigators, and to the LOI; and, sub-criterion 6 was satisfied by the Individual’s frequent changes in employment, often without providing required notice to employers, and his failure to meet his financial obligations. *Id.*; Tr. at 58, 69–70, 93–95, 99–100.

The Individual began meeting with the LPC in January 2020. Ex. 2 at 23. Based on her conversations with the Individual, the LPC did not find that he met the diagnostic criteria for APD. *Id.* The Individual meets with the LPC bi-weekly to receive treatment for anxiety related to the adjudication of his eligibility for a security clearance and family-related stressors. *Id.*; Tr. at 15.



On February 9, 2021, the Individual met with the LCSW for a forensic evaluation in advance of the hearing. Ex. 2 at 13. In addition to what he shared with the LCSW during the clinical interview, the Individual provided her with the SSC, his rebuttal to the SSC, a resume, letters of recommendation, and documents related to his employment with the DOE contractor. Tr. at 32–33. The Individual did not provide her with his response to the QNSP or LOI, or documentation of the results of OPM’s investigation. *Id.* During the clinical interview, the Individual reported to the LCSW that: it was typical for employees in his field of work to change employers as often as every three to six months; he rarely consumed alcohol as of the date of the interview and “by the summer of 2014 he had become almost abstinent from alcohol;” he consumed marijuana “sporadically” in 2017 when he was fired for failing a drug test after a workplace accident; and his omissions on the QNSP were due to “crippling” shame about his past.<sup>8</sup> *Id.* at 14–16. The LCSW’s report does not mention the Individual’s delinquent consumer debts, voluntary separation from numerous employers after one month or less, ineligibility for re-hire at five employers for failing to give or adhere to notice of his separation, or failure to disclose foreign investments on the QNSP. The LCSW concluded that the Individual did not meet the diagnostic criteria for any substance abuse disorder under the *DSM-5* and that “[t]here were no indications of [APD] present in [the Individual] at this time.” *Id.* at 17–20.

## VI. ANALYSIS

The DOE Psychologist’s opinion that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness raises security concerns under Guideline I. Adjudicative Guidelines at ¶ 28(b). Although the information relied upon by the DOE Psychologist might have raised security concerns under other portions of the Adjudicative Guidelines, the LSO determined that the Individual had mitigated the security concerns arising from his foreign business dealings under Guideline B, omission or concealment of information on the QNSP and in his interview with an OPM investigator under Guideline E, financial delinquencies and unpaid taxes under Guideline F, alcohol consumption and DUIs under Guideline G, drug use under Guideline H, and criminal conduct under Guideline J. Ex. 4; Ex. 5. Thus, I have considered this information exclusively as it informed the DOE Psychologist’s opinion which forms the basis for the LSO’s security concerns under Guideline I.

The Individual sought to establish that he did not demonstrate symptoms of APD, that he made significant behavioral changes that demonstrated rehabilitation or reformation, and that his judgment and reliability were not impaired. An individual can mitigate security concerns under Guideline I if:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

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<sup>8</sup> The Individual’s representation to the LCSW that he was “almost abstinent from alcohol” by 2014 is inconsistent with his statement to the OPM investigator in 2019 that he consumed 10 beers per sitting and “drinks to get drunk” as well as his wife’s statement to the OPM investigator that he consumed alcohol to intoxication monthly. Ex. 10 at 87, 121. The Individual’s claim that he used marijuana “sporadically” is also contradicted by the record. *Supra* p. 7, n. 6. The Individual’s statement that he failed to disclose information on the QNSP because of crippling shame is not consistent with the reasons he provided to the OPM investigator or in response to the LOI. *Supra* pp. 2–3.

- (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) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] 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; or,
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29(a)–(e).

Before addressing the mitigating conditions, I will first consider the Individual's assertion that the DOE Psychologist's opinion is deficient because the DOE Psychologist did not diagnose him with any specific condition under the *DSM-5*, "[t]he condition that is being alleged is essentially non-existent," and the DOE Psychologist relied on behavior that occurred years before the clinical interview. Ex. 2 at 4. The Individual's arguments related to the absence of a specific diagnosis are legally incorrect because "[a] formal diagnosis of a disorder is not required for there to be a concern under [Guideline I]." Adjudicative Guidelines at ¶ 27. However, the Individual's other concerns related to the DOE Psychologist's opinion are not unfounded.

While he denied that a specific period of time is sufficient to establish that APD is inactive or in remission, the DOE Psychologist testified that the absence of derogatory conduct for over one year would indicate significant progress. Tr. at 97–98. The DOE Psychologist noted that the Individual's antisocial behavior persisted for many years, but recent misconduct that he relied upon appears to be an imperfect fit with some of the *DSM-5* diagnostic criteria. The first diagnostic sub-criterion under criterion A for APD that the DOE Psychologist found applicable is based on "[f]ailure to conform to social norms with respect to unlawful *behavior*, as indicated by easily performing acts that are *grounds for arrest*." *Supra* p. 8 (emphasis added). In determining that the Individual met this sub-criterion, the DOE Psychologist relied in part on his opinion that the Individual might not have fully committed to responsible alcohol use and abstaining from illegal drugs in the future, as well as the Individual's failure to file or pay taxes. *Supra* p. 6. It is not apparent from the *DSM-5* why the Individual's future intentions as to drugs and alcohol were relevant to whether his *behavior* showed a failure to conform to social norms. It is also unclear, based on the plain language of the *DSM-5*, that the Individual's passive failure to resolve his unfiled taxes showed a "violation of the rights of others" and "easily performing acts that are grounds for arrest." Taken together, a layperson might question the DOE Psychologist's application of the *DSM-5*'s diagnostic criteria for APD.

However, the heavy burden of proof under the Part 710 regulations falls on the Individual, not on the LSO. 10 C.F.R. § 710.27(d). The Individual offered the opinions of the LPC and LCSW that he does not meet the diagnostic criteria for APD to rebut the DOE Psychologist's opinion. However, the letter from the LPC does not describe the information she relied on in forming her opinion. Ex. 2 at 21. I cannot conclude with certainty that she would have formed the same opinion

if she had received OPM's investigative report, the Individual's response to the LOI, and the other information available to the DOE Psychologist.

The LCSW also lacked documents available to the DOE Psychologist and, while her report indicates awareness of some of the Individual's derogatory conduct, it is unclear whether she possessed the same knowledge as the DOE Psychologist as to the Individual's deceitful and irresponsible behavior. The LCSW may also have been misled by statements the Individual made during her evaluation which are inconsistent with the record. *Supra* p. 9, n.8. Without knowing whether the LCSW was aware of the information relied upon by the DOE Psychologist in forming his diagnosis, it is uncertain whether she might have formed a different opinion if she had access to the same information. Moreover, the LCSW's February 2021 opinion that "[t]here were no indications of [APD] present in [the Individual] at this time" is unclear. *Id.* at 15. The LCSW noted that the Individual had been arrested for unlawful conduct and "engaged in personal and financial irresponsibility," but nevertheless "ruled out" each of the diagnostic criteria for APD. *Id.* I cannot determine with certainty from her report how the LCSW applied the diagnostic criteria for APD, when she believed that the Individual last demonstrated unlawful or irresponsible conduct, or whether she would have concurred with the DOE Psychologist's opinion based on the information available to him. Without testimony from the LPC and LCSW identifying the information available to them, describing how they came to their respective opinions, or disputing that the DOE Psychologist correctly applied the diagnostic criteria for APD, the Individual has not brought forth sufficient evidence for me to conclude that the DOE Psychologist's diagnosis was deficient or incorrect.

For the reasons described above, I find that the opinions of the LPC and LCSW are not sufficiently developed to rebut the opinion of the DOE Psychologist. For these reasons, I find that the Individual has not rebutted the DOE Psychologist's opinion and will apply the mitigating conditions under Guideline I accordingly.

The first mitigating condition under Guideline I is not applicable because the Individual is meeting with the LPC to address anxiety related to the adjudication of his eligibility for a security clearance and to help him manage family-related stressors. As the treatment that the Individual is receiving from the LPC is unrelated to the security concerns asserted by the LSO, the first mitigating condition is not satisfied in this case. *Id.* at ¶ 29(a).

The second mitigating condition under Guideline I is not applicable in this case because the Individual disputes the DOE Psychologist's opinion and is not pursuing counseling or treatment for any condition related to the behaviors that informed the DOE Psychologist's opinion and the LSO's security concerns. *Id.* at ¶ 29(b).

The third mitigating condition under Guideline I is not applicable because, while the DOE Psychologist acknowledged the Individual's positive life changes and stable employment since the clinical interview, he did not opine that the Individual's condition was in remission or had a low probability of recurrence of exacerbation. *Id.* at ¶ 29(c). For the reasons described above, the opinions of the LPC and LCSW are not sufficiently developed for me to conclude that they satisfy this mitigation condition.

The fourth mitigating condition under Guideline I is inapplicable because the DOE Psychologist opined that personality conditions, such as APD, are difficult to change and the Individual continued to demonstrate evasiveness and defensiveness at the hearing. *Id.* at ¶ 29(d).

I find the fifth mitigating condition under Guideline I inapplicable because the DOE Psychologist testified that his diagnosis of the Individual was unchanged, and the record is not sufficiently developed for me to conclude that there are no indications of a current problem. The Individual provided strong evidence, through his positive performance appraisal, performance award, and letters of recommendation, that he has established himself as a stable and effective employee. However, the Individual provided no documentation supporting his claims to have stabilized his finances, no alcohol or drug testing to support his claims of abstinence, and no substantive information from character witnesses as to his behavior outside of the workplace.<sup>9</sup> The Individual's positive work record and unsubstantiated claims as to his improved stability and reliability outside of the workplace are insufficient to overcome the DOE Psychologist's concerns and establish that there is no indication of a current problem. *Id.* at ¶ 29(e).

The DOE Psychologist's opinion raised significant security concerns under Guideline I of the Adjudicative Guidelines. There is insufficient information in the record on the basis for the LPC's and LCSW's opinions or the extent to which, if at all, they would disagree with the DOE Psychologist's opinion if they had all of the information available to him when he prepared the Report. As the DOE Psychologist's diagnosis of the Individual is unchanged, the Individual has not entered treatment for APD, and there is insufficient information in the record to establish that the Individual's APD is not currently affecting his judgment, reliability, or trustworthiness, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

## VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals

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<sup>9</sup> The Individual's wife submitted a succinct letter that primarily focused on the harm the Individual's family would suffer if he lost his income from the DOE contractor and did not provide any details on the Individual's current conduct. Ex. J.