



and *Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)* and that this condition impairs the Individual's judgement, stability, reliability, or trustworthiness. Ex. 7 at 10.

The LSO informed the Individual, in a letter dated February 28, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline I of the Adjudicative Guidelines. Ex. 1.

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 review hearing. The LSO submitted nine numbered exhibits (Ex. 1–9) into the record, and presented the testimony of the DOE psychologist at the hearing. The Individual submitted one exhibit (Ex. A) into the record, and presented the testimony of three witnesses, and his own testimony.

## **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. The LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as a basis for denying the Individual a security clearance. Ex. 1. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b). The Summary of Security Concerns cited the DOE Psychologist's opinion that the Individual meets the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* criteria for Bipolar I Disorder which is a condition that impairs his judgment, reliability, stability, and trustworthiness. Ex.1. The DOE Psychologist's opinion 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 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.

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**

In reaching her determination that the Individual met the diagnostic criteria for Bipolar I Disorder under the *DSM-5*, the DOE Psychologist relied on the Individual’s long history of mental health treatment, his self-reporting of past suicide attempts and some related inpatient hospitalizations, as well as reports of manic symptoms, and treatment records from his then-current mental health treatment provider. Ex. 7 at 3–5. In addition, the DOE Psychologist administered a battery of tests to the Individual including the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), and conducted a mental status exam. *Id.* at 6–8, 12–29. Based on the results, the DOE Psychologist found that in addition to Bipolar Disorder, the Individual meets the criteria for Delusional Disorder, unspecified, and he showed indications of Borderline Personality Disorder. *Id.* at 8. She opined that the Individual’s diagnosis of Bipolar I Disorder, characterized by both depressive and manic episodes impairs his judgment or reliability. *Id.* at 14. She concluded that the Individual’s prognosis is poor due to reasons including the presence of multiple psychiatric conditions that are characterized by poor insight, his history of suicidality, and the presence of psychotic symptoms. *Id.* at 10. She further concluded that the Individual’s prognosis could be improved with more frequent medication management and monitoring along with pharmacological treatment of his psychotic symptoms and weekly psychotherapy. *Id.*

The Individual submitted a letter from his previous provider, a psychiatric nurse practitioner, who provided both psychotherapy and medication management while he was under her care. Ex. A. The previous provider discussed the Individual’s diagnoses, prognosis, and compliance with his treatment plan. *Id.*

#### **V. HEARING TESTIMONY**

The Individual’s witnesses all testified that the Individual is trustworthy, reliable, and honest. Tr. at 15, 18–20, 28–29, 45–47. The Individual’s former supervisor testified that he has known the Individual for nine years, and served as his supervisor until May 2021. *Id.* at 12–13. During the time he supervised the Individual, he was aware that the Individual had some physical problems that affected his mobility and limited his ability to complete some tasks at work. *Id.* at 16–17. The

former supervisor testified that he had no concerns about the Individual's ability to work with sensitive documents, and in the nine years he has known the Individual has not had any concerns about the Individual's emotional stability. *Id.* at 20–21.

The Individual's coworker testified that he has known the Individual since 2013, and has socially interacted with the Individual outside of work approximately 10 to 12 times. *Id.* at 27. He testified that they have never discussed anything related to the Individual's psychological conditions or mental health treatment. *Id.* at 27–28.

The Individual's friend testified that she met him as a coworker approximately eight years ago. *Id.* at 41,51. She testified that she spends time with him outside of work approximately once a month to share a meal. *Id.* at 42. She stated that they have discussed the topics of work and family stress, and the Individual mentioned to her that he might seek mental health treatment. However, she did not know if he had in fact obtained treatment. *Id.* at 43. The friend also testified that she was aware that the Individual had some physical health problems that affected his ability to work in a full duty capacity. *Id.* at 43–44. She has spent time with him recently since he has been off work due to physical disability, and he has discussed his stress related to his being the sole support of his family. *Id.* at 50. She testified as to the Individual's wife's health conditions and the difficulty of their management. *Id.* Further, she stated that the Individual's stepdaughter and granddaughter live with the Individual and the stepdaughter is not very reliable in terms maintaining employment. Consequently, the stepdaughter does not help the Individual with family finances. *Id.* Regarding the Individual's emotional state since he has been on disability, the friend testified that she noticed that he appeared to be less stressed because he was no longer experiencing work related stress which included his work on a high-pressure project. *Id.* at 51–52.

The Individual testified regarding the mental health treatment he has received since 2019. He was previously receiving psychotherapy and medication management from a psychiatric nurse practitioner until her medical practice was no longer in his health insurance network. Tr. at 58, 76, 120, 125; Ex. A. He testified that after a four-month gap in treatment, he found a new therapist and restarted psychotherapy in June or July 2021.<sup>2</sup> *Id.* at 58, 61, 76. His therapy consists of individual psychotherapy sessions although he usually likes to have his wife attend his therapy sessions with him because she is the focal point of most of his current life stressors. *Id.* at 61. He asserted that both of his current mental health treatment providers including his provider for medication management, believe that he has a "mild case of bipolar." *Id.* at 60. He indicated that they diagnosed him with "whatever one's the least-lesser" form of Bipolar Disorder, but he indicated he was not sure if it was Bipolar I Disorder or Bipolar II Disorder. *Id.* The Individual testified that since the date of the DOE Psychologist's report in December 2019, he has had no thoughts of suicide, has made no suicide attempts, and did not feel that he has had manic symptoms, or significant depression. *Id.* at 64, 84.

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<sup>2</sup> The Individual inadvertently misspoke when he stated during the hearing that he stopped his prior treatment in March 2020. Tr. at 58. He subsequently testified that he had a gap of four months between when he ended treatment with his previous provider and when he began receiving psychotherapy with his current treatment provider in June or July 2021. *Id.* at 58, 61, 76. Therefore, it seems that the correct date for his termination of his prior treatment is March 2021-one year later. Moreover, the letter provided by the Individual's previous nurse practitioner confirms that the Individual was still under treatment with her as of July 7, 2020. Ex. A.

Regarding his medication regimen, the Individual testified that he has been taking the same combination of medications at the same dosages since 2016. *Id.* at 57, 63. He stated that when he met with his current nurse practitioner for medication management, they agreed that his current doses were effective, so she kept him on the same medication regimen. *Id.* at 66. The Individual testified that he takes his medication as prescribed and has no plans to stop taking his medication because he trusts the medical providers to prescribe him the correct medication at the correct dosages. *Id.* at 65–66. Further, he feels that his current prescribed combination of medication is working effectively. *Id.* at 63.

In support of the Individual’s testimony, he submitted a letter from his previous psychiatric nurse practitioner (previous provider) which was written in response to the DOE Psychologist’s report. Ex. A; *Id.* at 83. The previous provider stated that the Individual has been under her care for over two years and is diagnosed with Bipolar I Disorder, Most Recent Episode Depressed; Post Traumatic Stress Disorder, Chronic; and Alcohol Use Disorder, Severe, in Sustained Remission. Ex. A. She stated that after he initially sought treatment for depression, his mood stabilized within the first six weeks of treatment, and that due to his level of stability, he has only been seen every three months since May 2018. *Id.* She further stated that he has shown no signs or symptoms of mood elevation, depression, or anxiety, and that despite experiencing significant situational stressors over the past two years, his mood has remained stable with no breakthrough symptoms. *Id.* The previous provider noted that the Individual has never reported a history of psychosis, nor has there been any signs of psychosis while the Individual has been under her care. *Id.* She attested to the fact that “[h]e has been very compliant with his appointments and all aspects of his treatment plan.” *Id.*

The Individual testified that he manages his Bipolar Disorder by taking his medications, “taking one day at a time,” and applying the beliefs and tenets from his faith to his daily life. *Id.* at 63. He also relies on his support system which consists of his friend (who testified at the hearing), his current therapist, his current nurse practitioner who provides medication management, and his stepdaughter. *Id.* at 64–65. However, he admitted that other than his stepdaughter, he lacks a support system that would enable his wife to achieve stability in her psychological conditions, so he plans to move to another state where he will have additional family support to assist his wife. *Id.* at 78.

The Individual discussed his current mental health treatment which he received from his new providers in June or July 2021. *Id.* at 58–59. He stated that his current treatment plan is to meet with his therapist for individual psychotherapy sessions every other week for six months, followed by a decrease in frequency to monthly sessions. *Id.* at 62. His therapy provides him the benefit of addressing his current stressors, as well as ongoing monitoring for potential depressive and manic symptoms. *Id.* at 60. The Individual asserted that he has gained insight into his mental health by learning about the effects of his childhood trauma and his previous acts of self-harm. *Id.* at 62–63. However, despite this plan, he has attended only three therapy sessions since June or July 2021. *Id.* at 61. He asserted that the primary reason he has missed his appointments was because of his wife’s ongoing mental health problems. The Individual’s wife tried to commit suicide in September 2020 and was hospitalized for over four weeks. *Id.* at 66–68. She also attempted suicide again in July 2021. *Id.* at 68. He also testified that on two additional occasions, his wife’s mental health problems flared up while they were driving to his psychotherapy appointments which

impaired his ability to attend his therapy sessions. *Id.* at 69. Due to his wife's mental health problems, he has also had to cancel some therapy appointments at the last minute. *Id.* at 71. The Individual admitted that his wife's mental health problems are a hindrance to his ability to manage his psychological condition because they cause him to miss therapy appointments which are beneficial to him. *Id.* at 78. The Individual also testified that his hospitalizations for physical health problems have also caused him to miss some therapy appointments. *Id.* at 71–72.

When asked about his plans to address his wife's mental health issues, the Individual stated that he plans to move out of state where he will have the support of his siblings and his in-laws to provide the caregiving support he needs for his wife. *Id.* at 78. However, he admitted that this is not an immediate plan because it requires significant preparation before it can be brought into fruition. *Id.* at 75. When the Individual was asked what his immediate plans are if his wife has another adverse psychological episode, he replied, "I'm going to have to cross that bridge when I get to it." *Id.* at 76.

The Individual admitted that he has had some breakthrough depressive and manic symptoms after his DOE psychological evaluation. *Id.* at 84, 87. He stated that he felt a little depressed due to his wife's initial suicide attempt. *Id.* at 84–85. He realized that he was depressed because his stepdaughter pointed out to him that he was less responsive and was blaming himself for his wife's psychological problems. *Id.* at 85. However, the Individual asserted that once his stepdaughter informed him of his depression, he used his coping skills to identify his needs. Additionally, after speaking to his wife's mental health providers and his stepdaughter, he realized that his wife's suicide attempt was not his fault and he had no control over what actions she might take in the future. *Id.* at 86–87. Moreover, he asserted that the caregiving responsibilities that he provides for his wife do not exacerbate his psychological condition because it is giving him a purpose, which, helps him come out of depression. *Id.* at 80–81.

Regarding manic symptoms, he stated that he most recently experienced feelings of mania in early 2020. *Id.* at 87–88. He stated that when he had the manic episode, he spent several hundred dollars on unnecessary purchases such as extravagant meals. *Id.* at 88. The Individual testified that he told his previous treating therapist about his manic behaviors when they occurred, but that she did not indicate that there was a significant concern because her response to him was, "[y]ou're a very generous fellow, aren't you?" *Id.* at 89.

The DOE Psychologist testified after observing the hearing and all of the testimony offered therein. She opined that the Individual's diagnosis of Bipolar I Disorder is still present and continues to impair his judgment, stability, reliability, or trustworthiness. *Id.* at 104. She explained that none of the testimony presented at the hearing demonstrated any change in the Individual's diagnosis or treatment. *Id.* at 104–05. Moreover, she stated that it might have been helpful if she had been able to review the Individual's treatment records from his current treatment provider. However, the Individual had not provided these records. *Id.*

The DOE Psychologist opined that the Individual's prognosis is poor for multiple reasons. *Id.* at 105–06. Specifically, she stated that the Individual has not provided enough information to change her opinion. *Id.* at 105. She is also equally concerned because the Individual has not adequately addressed the issues identified two years ago in her evaluation. *Id.* The DOE Psychologist

acknowledged that the Individual has not reached the point that he has needed hospitalization. Nonetheless, the Individual has not presented enough evidence to indicate that he has made any improvement. *Id.* at 106. Moreover, she has concerns regarding his stability due to his current level of stressors combined with the fact that he is not engaged in any kind of meaningful therapy. *Id.*

Regarding the Individual's stability as related to his prognosis, the DOE Psychologist asserted that in order to show that he has a chance of maintaining stability despite his current stressors, the Individual needs to purposefully prioritize his own treatment, his own self-care, and learn better tools to be able to monitor himself. *Id.* at 117. He would need to know when he might need a medication adjustment or be able to recognize when he needs to address an active stressor or symptom with his therapist. *Id.* By contrast, the DOE Psychologist concluded that currently, the Individual has not shown any of the above behaviors, but rather, he is depending on his stepdaughter who was portrayed by one of the witnesses as being unreliable in terms of being able to maintain employment and contribute financially. *Id.* at 118. Thus, the Individual does not seem to have a reliable source of support that would encourage his stability. *Id.* This concerns the DOE Psychologist because, although the Individual has a history of rising to the occasion-*e.g.*, being able to provide care for his wife's mental health needs, the possibility of additional stressors such as inability to work, would affect his stability. *Id.* at 80-81, 118.

Further, the DOE Psychologist testified that even if the Individual had received treatment, his prognosis could still be guarded based on the results of his personality inventory from her evaluation. *Id.* at 111. The Individual's profile indicates that he may present as doing really well in treatment, which tends to lead providers to terminate treatment. *Id.* at 111-12. The DOE Psychologist opined that in order for psychotherapy to have a sustained effect, the Individual's therapist would need to understand and challenge his root issues and the Individual would need to maintain compliance in treatment. *Id.* at 112.

The DOE Psychologist stated that in order for the Individual to show that his Bipolar I Disorder was not impairing his judgment, reliability, or trustworthiness, he needed to have participated in regular psychotherapy since she completed her evaluation. *Id.* at 109. She stated her belief that the Individual has not made his treatment a priority. *Id.* at 110. She opined that the Individual would need to demonstrate that he is more knowledgeable about his disorder and has utilized more coping skills to address his depression. *Id.* He also needs to have the ability to check in with himself and recognize on his own when he was feeling depressed, rather than needing someone else to tell him that he was experiencing depression. *Id.* Moreover, the DOE Psychologist recommended that the Individual needs to be engaged in therapy including working on past traumatic events that influence his mood and his current perceptions about himself and the world. *Id.* She also opined that in order to measure objectively his level of engagement in his treatment, he needs to be in psychotherapy every other week for a year. *Tr.* at 116, 122. In addition, she testified based on her experience that it is very uncommon for someone who is being medicated for Bipolar Disorder to be on the same dosage of the same medication regimen for as long as the Individual has. *Id.* at 122. This is because it is difficult to achieve a long-term decrease in symptomatology by maintaining the same medication regimen. *Id.* at 123. This is in part because there are often reoccurring depressive symptoms even although they may not be as severe. *Id.*

## V. ANALYSIS

The DOE Psychologist's opinion that the Individual meets the DSM-5 criteria for Bipolar I Disorder which impairs his judgment, reliability, stability, and trustworthiness raises security concerns under Guideline I. Adjudicative Guidelines at ¶ 28 (b). An individual may 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;
- (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.

*Id.* at ¶ 29(a)–(e).

Regarding the mitigating factor set forth in ¶ 29 (a), I cannot find that the Individual has demonstrated consistent compliance with his treatment plan. While the Individual has demonstrated previous compliance with his former mental health treatment provider, he is no longer maintaining ongoing compliance since beginning psychotherapy with his current therapist. By his own admission, he has only attended three psychotherapy appointments since June or July 2021, despite his own therapist's recommendation and the DOE Psychologist's recommendation that he attend psychotherapy at least once every other week.

The Individual has also not satisfied the mitigating factor under ¶ 29(b). To his credit, the Individual has demonstrated an effort to remain in treatment, even after he lost his long-term treatment provider due to her no longer belonging to his health insurance network. He actively sought a new therapist and a new nurse practitioner in his network so he could receive both psychotherapy and medication management for his Bipolar Disorder. He also presented a letter from his former treatment provider which asserted that he is stable. However, he has not submitted any evidence such as treatment records from his current psychotherapist or current nurse practitioner. As such, other than his own testimony, the record contains no evidence from his current practitioner that indicates that the Individual has a favorable prognosis.

Regarding the third mitigating factor, the DOE Psychologist's opinion does not support a finding that the Individual has satisfied the mitigating factor set forth in ¶ 29 (c). The DOE Psychologist opined that the Individual's Bipolar Disorder continues to impair his judgment, stability, reliability, or trustworthiness and his prognosis is poor for multiple reasons. Her opinion that the Individual has not demonstrated that he has made any improvement since the time of her evaluation, reflects that the Individual's condition is not in remission or currently under control.



Moreover, despite the negative impact of his wife's serious psychological conditions that impair his own mental health treatment, the Individual only has a tentative plan of moving out of state where he has a more robust family support system. Currently, his only immediate plan if his wife condition worsens is to "cross that bridge when I get to it."

Further, the DOE Psychologist concluded that the Individual has currently not shown behaviors that demonstrate that he has a low probability of recurrence of impairment due to his Bipolar Disorder. She stated in order for the Individual to show that he can maintain stability despite his significant current stressors, he would need to demonstrate that he can successfully recognize when he has depressive or manic symptoms. Further, he should be able to demonstrate that he can recognize when he needs to consult with his treatment providers regarding medication adjustment or how to resolve stressors. Instead, the Individual is relying on his stepdaughter to tell him when he is showing signs of depression. Moreover, the DOE Psychologist stated that the Individual needed to have shown that he is attending therapy every other week for a year, and is addressing deeper issues including childhood traumas that still affect his current mood and symptoms.

Additionally, the Individual has not satisfied the mitigating factors set forth in ¶ 29 (d) and (e). Since both of these factors relate to the current status of the Individual's condition, I will analyze them together. The Individual has shown some indications of emotional instability, including his testimony that he experienced manic symptoms in early 2020. He also testified that he experienced depression following his wife's initial suicide attempt. As testified to by the DOE Psychologist, these symptoms are known as breakthrough symptoms, and contrary to his prior treatment provider's letter which states he has not experienced any breakthrough symptoms, his testimony reflects otherwise. Further, the Individual has not demonstrated that he has developed and utilized coping skills that would encourage his stability. He presented no evidence to show that he has attended therapy every other week for a year, nor has he demonstrated sufficient self-care by being able to monitor himself for symptoms and his need for more frequent medication management. Moreover, the Individual has not put forth sufficient evidence to show that his Bipolar Condition was temporary. He presented no treatment records from his current providers and has only attended three therapy sessions with his current therapist, so I cannot conclude that the Individual's condition is resolved. In addition, despite the negative impact of his wife's psychological problems on his own mental health, the Individual has not developed an immediate plan to alleviate the primary stressors that affect his ability to achieve long term stability. As such, I cannot conclude that there is no indication of a current problem.

For these reasons, I find the Individual has not presented sufficient evidence to satisfy the mitigating conditions under ¶ 29(a)-(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 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's access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Office of Hearings and Appeals