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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: June 8, 2022) Case No.: PSH-22-0100
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Issued: December 8, 2022

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. A DOE-Contractor Psychologist (DOE Psychologist) diagnosed the Individual with a mental health condition that has the potential to affect the Individual’s judgment, trustworthiness, and reliability. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of five witnesses and testified on his own behalf. The LSO presented the testimony of the DOE Psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted two exhibits, marked as Exhibits A and B.

¹ Under the regulations, “[a]ccess authorization’ means 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). Such authorization will also be referred to in this Decision as a security clearance.

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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Guideline I states that “[c]ertain 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. Conditions that may cause a security concern include:

- (a) Behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) An opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
- (c) Voluntary or involuntary inpatient hospitalization;
- (d) Failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions; and
- (e) Pathological gambling, the associated behaviors of which may include unsuccessful attempts to stop gambling; gambling for increasingly higher stakes, usually in an attempt to cover losses; concealing gambling losses; borrowing or stealing money to fund gambling or pay gambling debts; and family conflict resulting from gambling.

Adjudicative Guidelines at ¶ 28.

The LSO alleges that on March 4, 2022, the DOE Psychologist evaluated the Individual and, on March 17, 2022, diagnosed him with borderline personality disorder, a condition that can impair judgment, stability, reliability, or trustworthiness. Ex. 1 at 1. Accordingly, the LSO’s security concerns under Guideline I are justified.

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

The Individual was a member of the military from 2000 to 2013, when he received an honorable discharge due to permanent disability. Ex. 3 at 1, 4; Tr. at 164. The Individual suffers from alcoholism, but after a four-year period of problematic drinking from 2001 to 2005, he has not consumed any alcohol since July 23, 2005. Ex. 7 at 6; Tr. at 127. The Individual married his first wife in 2004. Ex. 7 at 6. In 2005, the Individual threw two beer bottles at the kitchen wall inside his home, which was government property, after his then-spouse told him she was having an affair. Subsequently, military police were dispatched to the Individual's home in response to an unrelated matter, saw the damage to the kitchen wall, and filed a report. Ex. 5 at 3. The Individual and his first wife divorced in 2006. Ex. 7 at 3. He married his current spouse in 2010. *Id.* After multiple unreported instances of domestic violence, the Individual and his current spouse, also in the same military branch, had Military Protective Orders placed against each other in March 2011. Ex. 5 at 3. In November 2011, the Individual and his spouse returned home from a formal military social event and began arguing in their front yard. Tr. at 128. The spouse grabbed at the medals attached to the Individual's uniform. *Id.* The Individual grabbed his current spouse by the throat and threw her to the ground and his spouse scratched at his face. Ex. 5 at 3. Subsequent to this incident, the Individual was investigated under the Unified Code for Military Justice (UMJC) Article 128 for Assault and was required to complete anger management and domestic violence classes. *Id.* In September 2013, the Individual was cited and sentenced under the UMJC Article 134 for Failure to Obey Order or Regulation when military police found an unregistered handgun in the Individual's home. Ex. 5 at 3. The military police located the weapon after the Individual's wife noticed the Individual's gun was missing after an argument—during which he had threatened to give her a black eye—and contacted senior personnel at her command. *Id.* In his responses to the

LSO's letter of interrogatory, the Individual stated that he could not recall having any other disputes or violations of law.

In his interviews with the Office of Personnel Management security clearance investigator in February 2022, the Individual attributed the incident with his first wife to alcoholism and the incidents with his current wife to untreated post-traumatic stress disorder (PTSD) he developed while deployed in a combat zone from 2007 to 2008. Ex. 4 at 1; Ex. 7 at 3. I note that the Individual had been in intensive treatment for PTSD, as described below, for about one year at the time of the unregistered handgun incident in September 2013. In his responses to the LSO's letter of interrogatory in January 2022, he added that the incidents with his current spouse were due to his inability to deal with a number of stressors in his life at the time—including his mother's and grandfather's deaths and his wife's deployment—without treatment, counseling, or being prescribed appropriate mental health medication. Ex. 6 at 5. In his evaluation with the DOE Psychologist he partially attributed his post-deployment incidents to his prescribed medications at the time being ineffective. Ex. 7 at 4. Also in his evaluation with the DOE Psychologist, the Individual described multiple instances in which he intentionally omitted or refused to provide his history of PTSD, depression, and alcohol use when applying for a security clearance, once in defiance of an investigator's specific request for the information. Ex. 7 at 7.

From September 2012 to November 2013, the Individual was admitted to a military medical facility where he received treatment for PTSD for the first time. Ex. 7 at 4. During that time, the Individual underwent electroconvulsive therapy (ETC). *Id.* When evaluated by the DOE Psychologist, he had difficulty recalling any events from certain years, was largely unable to recall any events of concern, was unable to remember attending his senior prom, and stated that he still had difficulty remembering procedures and appointments. *Id.* At times, the Individual attributed his memory problems to PTSD, reporting them as one of the symptoms leading to his treatment. *Id.* at 7. At other times, the Individual described his memory loss as a side effect of his ETC therapy. *Id.* After his military discharge, the Individual continued outpatient treatment for PTSD and depression through outpatient Veterans Affairs (VA) clinics. *Id.* at 6. When evaluated by the DOE Psychologist, the Individual was not receiving therapy, but was being treated with medication. *Id.*

In her report, the DOE Psychologist opined that the Individual did not meet the diagnostic criteria for PTSD at that time, but did diagnose him with borderline personality disorder. She wrote that “[w]hile [the Individual] currently meets some of the diagnostic criteria of PTSD (inability to remember...; avoidance of or efforts to avoid external reminders of the event; intense or prolonged distress at exposure; distressing dreams), he does not possess enough criteria to meet the formal diagnosis of PTSD at this time.” Ex. 7 at 7. She noted that the Individual endorsed fewer PTSD and depression symptoms than the general public in his psychological testing from the evaluation. *Id.* The DOE Psychologist stated that the Individual's concerning behaviors were best understood as symptoms of borderline personality disorder. *Id.* In terms of diagnostic criteria, she identified the Individual as demonstrating “a pattern of unstable and intense interpersonal relationships, impulsivity in areas that are potentially self-damaging (spending and substance abuse), affective instability due to a marked reactivity of mood, and inappropriate, intense anger or difficulty controlling anger.” *Id.* She further opined that “the significant lapses in memory for different aspects of his life beginning in adolescence may indicate the presence of dissociation. These symptoms can be exacerbated by stressful situations such as combat and death of his mother.” *Id.* These five criteria were sufficient for a diagnosis of borderline personality disorder. Tr. at 63. The

DOE Psychologist added that “[c]o-occurring disorders such as substance misuse, anxiety and depression are common with borderline personality disorder....” Ex. 7 at 8. Based on her evaluation, the DOE Psychologist concluded that the Individual had a psychological condition that could impair his judgment, stability, and reliability. *Id.* at 9.

At the hearing, the Individual presented the testimony of a former coworker, a former direct report, a lifelong friend, a former teacher, and his psychologist (Individual’s Psychologist).

The Individual’s former coworker testified that she and the Individual had worked together for just over a year in a previous job, which they held about three years before the hearing. Tr. at 13–14. Since that time, they communicated via text message and have seen each other in person two or three times when the Individual was in that area. *Id.* at 14–15. The former coworker had never seen the Individual struggle to control his anger. *Id.* at 16, 19. She described the Individual as good-natured, dependable, and supportive. *Id.* at 17. She recalled the Individual stating at a work function that he does not drink alcohol and that the Individual told her the history behind his decision. *Id.* at 17. She never saw the Individual lose control or behave in a manner that would cause her concern, even under high pressure or frustrating circumstances. *Id.* at 19. The only time she recalled the Individual being overly emotional was when he was describing his young child’s reaction to his weekly trip to the city where he worked. *Id.* at 20. She described the Individual feeling sad in a manner that she felt was normal for someone who had to leave their child every week to travel to work. *Id.*

The Individual’s former direct report from the military testified that the Individual had been his sergeant in the marines for a year about 10 years prior. Tr. at 24. They had not seen each other in person since then, but they kept in contact via cell phone. *Id.* at 25. He described the Individual as his boss and friend. *Id.* The former direct report felt that he could call the Individual any time he needed to talk. *Id.* at 32. He stated that if the Individual came to his area, he would even feel comfortable lending him a vehicle while he was there. *Id.* at 32–33. He had never seen the Individual struggle to control his anger and described the Individual’s demeanor as a superior as appropriate. *Id.* at 25–26, 38. He was unaware of any time when the Individual was violent. *Id.* at 26, 38. He recalled that the Individual told him that he did not drink and he had never seen the Individual consume alcohol. *Id.* at 35–36. He had never seen or heard of the Individual reacting with inappropriate anger toward his wife. *Id.* at 38.

The Individual’s friend had known him since early childhood and they had been best friends since that time. Tr. at 44. The friend described the Individual as being like a brother to him. *Id.* at 44–45. They saw each other at least once a month, often more. *Id.* at 44. While the Individual was in the Marine Corps, the friend saw him whenever he was at home on leave. *Id.* at 45–47. He recalled the Individual having alcohol issues early in his military career and attending treatment for them. *Id.* at 47. The friend had never had concerns about the Individual’s ability to control his anger. *Id.* He was unaware of any conflict between the Individual and his wife beyond quotidian arguments. *Id.* at 47–48.

The Individual’s former teacher, now a friend, had known the Individual for about 30 years. Tr. at 95. He had been the Individual’s middle school teacher for two years and then taught at the Individual’s high school when the Individual attended it. *Id.* They communicated through text messaging and phone calls two or three times per month and saw each other in person three or four

times per year. *Id.* at 96. He described his relationship with the Individual as very close; they typically discussed their families and personal lives. *Id.* at 97. The former teacher testified that the Individual has strong relationship skills as evidenced by his many decades-long friendships. *Id.* at 98. The Individual knew the former teacher's family, but the former teacher had not met either of the Individual's spouses. *Id.* at 98, 103. However, he knew of them and was not aware of any incidents of violence or domestic violence the Individual had with them. *Id.* at 98–99. The Individual had discussed his feelings of frustration and anger, among other emotions, with the former teacher, who testified that he had never found the Individual's anger to be inappropriate or concerning. *Id.* at 99. He did not believe the Individual had a reputation for being quick-tempered. *Id.* at 100. He testified that he observed a normal range of human emotions in the Individual and described the Individual as a generally happy person. *Id.* at 99–101. The former teacher testified that the Individual has grown up a lot in the last 10 years, giving up alcohol, working hard to support his family, setting goals for himself, and striving to fulfill his potential. *Id.* at 109.

The Individual testified that, regarding his first wife, he was still drinking heavily during the period of his life when he married her and does not remember all the details. Tr. at 124. He testified that, due to his alcoholism, he “married a girl who was pregnant, and from there I gave this child my last name, and I don't remember a whole lot.” *Id.* He testified that his first wife described him as difficult and argumentative. *Id.* at 125. The Individual testified that he had about two years between his sobriety date and his first deployment when he felt “normal.” *Id.* at 127. He testified that when he returned from his first deployment, he felt like a different person. *Id.* He had lots of issues but did not know how to deal with them, so he just buried himself in work. *Id.* Regarding whether he had ever had difficulty controlling his anger, he testified, “[s]o of course, when you're a Marine, things do get—things do get out of hand sometimes, but never to the point ... with any of my Marines” being adversely affected. *Id.*

The Individual testified that he suffered from memory loss that was caused by the ECT he underwent to treat his depression and PTSD. Tr. at 128–29; *see also* Ex. A. He described looking at a photo with a friend from his high school prom and not knowing what event he had been at in the picture or why he was standing next to that friend's current wife while wearing a tuxedo. Tr. at 130. He had no recollection of what led to the event, but his friend explained that the Individual had taken the friend's current wife to prom as a friend. *Id.* The Individual still had no memory of the event. *Id.*

The Individual was asked to describe the incident with his first wife in which he was accused of throwing beer bottles. He testified that he did not recall the situation but stated that if the investigators said it happened, it must have happened. Tr. at 125–26. However, he recalled that the first spouse was living in another state when the incident was said to have occurred, and stated that “if she's not present, that wouldn't have been a domestic dispute.” *Id.* at 126, 152–53. He was asked about his being charged with damage to government property while he was in the military.² *Id.* at 153. The Individual testified that he did not remember being charged and that did not know where to find information about it because he “didn't keep any negative documents” from his time in the armed forces. *Id.* He further testified that if he had been charged a crime, he would have had to appear before a tribunal for a non-judicial punishment or a court-martial and he did not remember doing either. He testified that he would not have been able to get his honorable discharge if he had

² The record does not state that the Individual was charged.

been court-martialed and that there would likely be more documentation available if he received a non-judicial punishment. *Id.* at 154. He could not remember discussing the incident with the background investigator for his security clearance. *Id.* at 154–55.

The Individual described the November 2011 incident with his second wife when the neighbors called the military police. He and his second wife had returned from a formal military event during which his wife had consumed alcohol. Tr. at 128. He testified that “it got to a point where we were arguing so loud, and then where she was inebriated she grabbed my medals from my chest...” *Id.* He testified that the military police classified the incident as a domestic violence incident, that he did not believe he had testified against his wife, and that he did not remember many details from that time period either, including details of the incident in question. *Id.* He later testified that he believed his wife had been arrested following the incident and that he had been required to attend a domestic violence prevention class. *Id.* at 131.

The Individual could not provide an example of any other significant incident in his life that he had failed to remember when someone brought it up to him. Tr. at 163. He testified that he had spoken with his wife prior to his interviews with investigators to get the details of the incidents. *Id.* at 197. The Individual testified that he discussed memory loss with his doctor after receiving electric shock therapy. *Id.* at 163. He had limited treatment for memory loss about nine years before the hearing. *Id.* at 163–64. He did not recall any other doctors discussing memory issues with him after that time. *Id.* at 164. At the time of the hearing, the Individual was being treated with medication and therapy. *Id.* at 165–67, 168. The Individual testified that he has not worked on conflict management because there is no conflict in his life. *Id.* at 168. He testified that he felt no anger and therefore had not worked on anger issues. *Id.* at 172–73. He later testified that he has conflict with his wife but handles it appropriately. *Id.* at 122. The Individual testified that he was still experiencing some PTSD symptoms. *Id.* at 217. However, he believed his treatment was working. *Id.* at 220.

The Individual’s Psychologist had seen the Individual six times since August 2022. Tr. at 56. He testified that the Individual had reported significant stress and a history of mental health treatments. *Id.* at 57. He testified that the Individual’s therapeutic goal was to avoid a relapse of depression or PTSD symptoms. *Id.* He developed a treatment plan, which required the Individual to continue contact with the VA clinic that initially assessed him, continue taking his psychotropic medications, and begin a mindfulness-based cognitive therapy. *Id.* The recommended cognitive therapy was structured and involved reading material and doing exercises from a workbook and discussing it in therapy sessions. *Id.* at 57–58. It could be completed in eight weeks, but often takes longer. *Id.* at 58. His assessment of the Individual was based primarily on the Individual’s self-reporting. *Id.* at 60.

The Individual’s Psychologist disagreed with the DOE Psychologist’s diagnosis of borderline personality disorder. Tr. at 62–63. He testified that the Individual had been referred to him by the VA clinic, which he believed had diagnosed the Individual with bipolar disorder II. *Id.* at 61. The Individual’s Psychologist believed that bipolar disorder II was the proper diagnosis for the Individual. *Id.* at 61–62. He had reviewed the DOE Psychologist’s report and believed that did not describe enough criteria to meet the diagnostic criteria for borderline personality disorder. *Id.* at 63. While acknowledging that the Individual met some diagnostic criteria, such as a pattern of instability in his life (though not with the extremes described by the criterion) and financial problems, he did not believe the description of the Individual met the five-of-nine criteria threshold

set by the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition. *Id.* at 65–66. The Individual’s Psychologist stated that the Individual’s history of alcoholism could be a criterion, but, taking into account that the Individual had been sober for over 10 years, he did not give it much weight. *Id.* at 66. He also noted that the domestic violence reports were many years prior. *Id.* at 67. His main reason for disagreement was that there was not enough evidence to diverge from a diagnosis of bipolar disorder II made by a provider who had expertise and history with the Individual, such as the VA clinic. *Id.* The Individual’s Psychologist opined that the Individual’s mental health issues did not affect his judgment, trustworthiness, or reliability. *Id.* at 79, 83. He testified that this opinion was based on the Individual’s self-report and acknowledged that the Individual had denied having had symptoms of depression or PTSD in past self-assessments. *Id.* at 84–86, 91–92.

The Individual testified on the second day of the hearing that he first learned that the Individual’s Psychologist had diagnosed him with bipolar disorder II, instead of borderline personality disorder, on the first day of the hearing.³ *Id.* at 192–93. He testified that his psychologist, in explaining why he hadn’t mentioned this to the Individual sooner, had told him that “when he was going over [the DOE Psychologist’s report with him,] he didn’t think to disclose it to me.” *Id.* at 194. The Individual did not believe his psychologist had testified correctly about the facts of his life and disputed that any other doctor had ever diagnosed him with bipolar disorder II. *Id.* at 204–07.

The DOE Psychologist testified that she would not change the diagnosis she gave the Individual in her report. Tr. at 233. She testified that when she spoke to the Individual’s prescribing physician at the VA, he specifically denied that the Individual had ever met the diagnostic criteria for bipolar disorder. *Id.* at 242–43.

Regarding the Individual’s memory issues, she testified that because the Individual has not had a neurological assessment to diagnose his memory loss, the VA never investigated it in terms of a service-connected disability, and because he did not report other cognitive symptoms, she believed the Individual was experiencing dissociation—a symptom of borderline personality disorder—rather than experiencing memory loss. *Id.* at 234. In further support, she testified that on his psychological testing, the Individual had been able to remember how he answered similar questions that were worded in different ways. *Id.* She expressed concern that the Individual’s self-reports that no further domestic violence occurred after 2013 were unreliable because of his inability to remember events even when provided with a contemporaneous written summary. *Id.* at 136. *Cf.* Ex. 6 at 6. She also expressed concern that the Individual did not appear disturbed by the violent events of his past or by his inability to remember them. *Id.* at 244. The DOE Psychologist noted that no documentation had been presented of anyone observing the Individual interacting with his wife, despite several witnesses having known him for a long time. *Id.* at 256. Ultimately, she felt unable to rely on the Individual’s self-reports of symptoms and events and stated that she did not “have any reason to think that he is going to take the necessary steps to fix the problems, because he doesn’t understand them, or he doesn’t agree with them.” *Id.* at 259.

The DOE Psychologist testified that the Individual’s medications were inappropriate for his diagnosis, noting that at least one of the Individual’s anxiety medications was not approved for use to treat anxiety and that the Individual’s primary medication, Lithium, was not approved for mood

³ This hearing took place over two non-consecutive days.

regulation. *Id.* at 238–39, 243. She testified that the Individual’s therapy—the cognitive behavioral workbook—was not appropriate treatment for borderline personality disorder. *Id.* at 240. She gave the Individual a poor prognosis because he was not being treated for borderline personality disorder, because he did not believe he had that condition, and because he was not motivated to examine his history of violent behavior. *Id.* at 244. She also noted that the Individual continued to avoid discussing certain triggering topics such as personal flaws or mistakes he had made in the past. *Id.* at 258–60.

The DOE Psychologist testified that even if the borderline personality disorder diagnosis was incorrect, the Individual still had a constellation of traits and behaviors that comprised an unspecified mental health condition that affected his judgment trustworthiness and reliability. *Id.* at 259–60. She testified that he was not reformed or rehabilitated from that unspecified mental health condition. *Id.* at 261.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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 commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Conditions that could mitigate a security concern under Guideline I include:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29. None of these mitigating factors apply in this case.

As an initial matter, I must address the testimony of the Individual's Psychologist. Though he was qualified as an expert witness for the hearing, I cannot conclude based on his testimony that the Individual has bipolar disorder II. The DOE Psychologist disagreed with this diagnosis, and the Individual testified that he had never been diagnosed with bipolar disorder before meeting with the Individual's Psychologist. The Individual's Psychologist based his diagnosis of bipolar disorder II in large part on his belief that the VA had made that diagnosis and his hesitance to second-guess a diagnosis by a long-time treatment provider. But the DOE Psychologist testified that, according to her conversation with the Individual's prescribing physician at the VA, no diagnosis of bipolar disorder II had ever been made. Had I believed there was a diagnosis by a duly qualified mental health professional of bipolar disorder II, and that this condition may impair the Individual's judgment and reliability, I would have considered whether the Individual had mitigated the concerns associated with this diagnosis. This is not the case. But even if it were, the analysis below indicates that whatever the Individual's diagnosis may be, the Individual has not mitigated the LSO's concerns under Guideline I.

The DOE Psychologist gave the Individual a poor prognosis and opined that the Individual continues to have a psychological condition that can affect his judgment, reliability, and trustworthiness. The Individual's Psychologist opined that the Individual no longer has a psychological condition that can affect his judgment, reliability, or trustworthiness. When two experts give opposing opinions, I am required to consider the credibility of their testimony and the support provided for their opinions. As previously stated, I do not find the Individual's Psychologist's diagnosis of bipolar disorder II to be well-supported. Furthermore, his assessment that the Individual no longer possesses a psychological condition that can affect his judgment, trustworthiness, and reliability is at odds with a diagnosis of bipolar disorder II (a lifelong condition which has the potential to affect judgment, trustworthiness, and reliability) and the testimony of the Individual (his continuing issues with memory loss and the need for a drug such as Lithium). I find the DOE Psychologist credible in her assessment that the Individual still possesses the psychological condition – whether borderline personality disorder or another unspecified condition – that gave rise to the Guideline I concern.

Regarding mitigating factor (a), the Individual has borderline personality disorder or something very similar to it but is not being treated for that disorder. Two of his medications are being prescribed for uses not approved by the FDA, and it is not clear that the cognitive behavioral workbook is an effective treatment for the Individual's struggles with dissociation. Regarding factor (b), the Individual is not pursuing treatment specific to his condition and the DOE Psychologist gave him a poor prognosis. Regarding factors (c), (d), and (e), the DOE Psychologist opined that the Individual is not rehabilitated from his condition and that he continues to experience symptoms such as dissociation and avoiding talking about difficult topics. The Individual's testimony shows that he could not remember events that would typically be considered very significant. His testimony further shows that he has not diligently pursued treatment for any mental

health conditions by attending therapy regularly since his discharge from the military. This raises doubt as to whether the Individual will continue his treatment long-term. For these reasons, I find that the Individual's condition is not controlled, in remission, or resolved and that he still experiences symptoms.

Even putting aside the question of the proper diagnosis, the symptoms and behaviors exhibited by the Individual in this case raise clear security concerns. The DOE Psychologist expressed concern, regarding the Individual's laissez faire approach to learning about his history of violent incidents and the extent to which he appeared untroubled by both his prior violence and his inability to recall details about it. This, in itself, signifies poor judgment and reliability, particularly as it relates to the Individual's personal code of conduct. An unremembered report that they have committed violent acts should trigger alarm in a clearance holder (showing sound judgment about acceptable behavior) and diligent pursuit of a solution (showing reliability in addressing difficult situations) because of the potential security concerns that it raises. Furthermore, the very fact that the Individual has significant memory lapses, regardless of their cause or content, raise doubts about his judgment, reliability and trustworthiness. His memory lapses create risks such as, for example, that the Individual may have poor judgment in a situation the details of which he has forgotten, may be untrustworthy in statements about any past event, and may not be relied upon to learn new information or perform assigned tasks. Accordingly, I find that the Individual's psychological condition, regardless of diagnosis, can, and in certain aspects already does, affect his judgment, reliability, and trustworthiness.

Having applied the Adjudicative Guidelines' mitigating factors to the evidence presented, and having considered such evidence in light of the whole person concept, I cannot find that the Individual has mitigated the concern under Guideline I.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guideline I of the Adjudicative Guidelines. I further find that the Individual has not succeeded in resolving those concerns. Therefore, I cannot conclude that granting 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 grant access authorization to the Individual.

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals