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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 19, 2024 ) Case No.: PSH-24-0142  
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Issued: December 6, 2024

**Administrative Judge Decision**

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (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's access authorization should not be restored.

**I. BACKGROUND**

The Individual is employed at a DOE site, in a position which requires that he hold a security clearance. *See* Exhibit (Ex.) A at 7 (showing the Individual's employment history).<sup>2</sup> On March 23, 2023, the Individual "conducted a back-up activity from his home server" to the DOE site's network, which resulted in over 187,000 sexually explicit images being uploaded onto the DOE site's network via his government-issued computer. *See* Ex. 3 at 13 (Case Evaluation Sheet summarizing information obtained during the evaluation of the Individual's eligibility for access

<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 Individual submitted his exhibits in two PDFs. The exhibits in the first PDF were unmarked. I designated the documents contained in the PDF as exhibits A–N for identification. Transcript of Hearing, OHA Case No. PSH-24-0142 (Tr.) at 7. The Individual marked the exhibits contained in the second PDF as exhibits O–V. This Decision cites to pages within each PDF in the order in which they appear regardless of internal pagination. Thus, the numbering of the Individual's exhibits is not consecutive and restarts at "1" with the second PDF.

authorization).<sup>3</sup> The Individual was subsequently interviewed as part of an investigation into the introduction of the sexually explicit material onto the DOE site's network. *Id.* at 14. During the interview, the Individual admitted that his conduct violated his employer's human resources and cybersecurity policies and was wrong. *Id.*; Ex. 4 at 17. He also admitted that he was receiving treatment for depression, and that he had felt depressed during the prior year. Ex. 5 at 24.

On February 6, 2024, at the request of the Local Security Office (LSO), the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 7 at 30. The DOE Psychologist's report of the evaluation (Report) indicated that during his clinical interview, the Individual reported that he was previously diagnosed with attention-deficit/hyperactivity disorder (ADHD) and depression, and that he was receiving treatment for both conditions. *Id.* at 33. The DOE Psychologist opined that the Individual was "experiencing a major depressive episode at a moderate to severe level," the symptoms of which were "contributing to impaired judgment[,] trustworthiness[,] [and ability] to comply with rules and policies." *Id.* at 37.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 7–9. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E, I, and M of the Adjudicative Guidelines. *Id.* at 5–6.

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 conducted an administrative hearing. The LSO submitted nine exhibits (Ex. 1–9). The Individual submitted twenty-two exhibits (Ex. A–V). The Individual testified on his own behalf and offered the testimony of his wife. Tr. at 3, 12–13, 53. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 119.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS<sup>4</sup>

The LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as one basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 6. "Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist's opinion that the Individual was "experiencing a major depressive episode at a moderate to severe level"

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<sup>3</sup> The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

<sup>4</sup> The LSO cited Guideline E (Personal Conduct) as a basis for the security concerns. Ex. 1 at 5. Specifically, the LSO alleged that the Individual's having allowed sexually explicit images to be uploaded to the DOE site's network was a "violation of company and security policies as well as inappropriate behavior in the workplace." *Id.* This allegation appears to invoke ¶ 16(d) of the Adjudicative Guidelines which concerns, among other things, "inappropriate behavior" and "a pattern of dishonesty or rule violations." Adjudicative Guidelines at ¶ 16(d)(2)–(3). The LSO's allegations under Guideline E overlap with those it made under Guideline M. *Compare* Ex. 1 at 5 with Ex. 1 at 6. Accordingly, the LSO improperly raised these concerns under ¶ 16(d) of the Adjudicative Guidelines because that paragraph pertains only to "credible adverse information that is not explicitly covered under any other guideline." Adjudicative Guidelines at ¶ 16(d). Therefore, I will not consider the LSO's allegations under Guideline E.

and that his symptoms could impair his judgment and trustworthiness. Ex. 1 at 6. 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).

The LSO cited Guideline M (Use of Information Technology) of the Adjudicative Guidelines as another basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 6. “Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual’s reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.” Adjudicative Guidelines at ¶ 39. The SSC cited the Individual’s March 23, 2023, act of uploading of over 187,000 sexually explicit images onto his employer’s network and his admission to his employer that his conduct violated its human resources and cybersecurity policies. Ex. 1 at 6. The Individual’s introduction of “media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized” justifies the LSO’s invocation of Guideline M. Adjudicative Guidelines at ¶ 40(f).

### **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) (strong presumption against the issuance of a security clearance).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. FINDINGS OF FACT**

The Individual’s employer initiated a “forensic examination” after it detected the Individual transferring “large amounts of data” to the DOE site’s network on March 23, 2023. Ex. 4 at 18. On October 12, 2023, the Individual was interviewed by his employer, during which he explained that when he was setting up a cloud storage account related to his position at the DOE site, he also

connected his personal cloud storage account to his employer's account. *Id.*; *see also* Tr. at 110 (reflecting the Individual's testimony at the hearing that he was unaware that the sexually explicit images had been uploaded to DOE site's network until he was interviewed). The Individual "thought that even though his personal drives were connected to [his employer's], they were somehow partitioned, and his personal material would not contaminate his [government-issued computer]." Ex. 4 at 18. He stated that the sexually explicit images were an accumulation of "'25–30 years' worth of pornographic material' he had collected on his personal computer . . ." *Id.* at 17. The Individual denied that he searched for, or generated, sexually explicit material while working. *Id.* at 18. The Individual also stated that he has suffered from depression throughout his life, and he had been taking medication and seeing psychiatrists for his depression since he was a minor. Ex. 3 at 14.

The Individual has met with his current psychiatrist (Individual's Psychiatrist) since July 2017. Ex. 7 at 35. That same year, the Individual's Psychiatrist diagnosed the Individual with "major depressive disorder, moderate, recurrent, in full remission for approximately one year" and "ADHD with problems in focus, attention, follow-through, procrastination, distractibility, and impulsivity." *Id.* The Individual's Psychiatrist prescribed the Individual medications to treat his depression and ADHD. *Id.* at 33–36. The Individual and the Individual's Psychiatrist have met on a monthly to quarterly basis to adjust the Individual's medication and the Individual contacts the Individual's Psychiatrist as necessary between appointments. *Id.* at 35; *see also* Ex. C at 24–25 (reflecting emails from the Individual to the Individual's Psychiatrist related to his medication). In early 2022, the Individual was prescribed Adderall for the first time. Tr. at 103; Ex. O at 27. The Individual, in consultation with the Individual's Psychiatrist, began weaning off of Adderall in early 2024 and discontinued using it in September 2024. Tr. at 103–04.

The Individual met with the DOE Psychologist on February 6, 2024, for a psychological evaluation. Ex. 7 at 30. He told the DOE Psychologist that he began experiencing a depressive episode in 2021 or 2022 which had persisted through 2023. *Id.* at 34. During the depressive episode he felt "extremely isolated and lonely," and started "playing" with tools that made generative images as a coping strategy, including "robot pornography." *Id.* at 32.

The Individual was using his personal cellphone to view the generative images, but he wanted to view larger images, so he viewed the images using his government-issued computer. *Id.* He also reported that, since the 1990s, he had maintained a "giant compressed file with several directories of pornographic images," which he moved to his personal cloud storage drive so he could use them to make generative images. *Id.* It was this directory of sexually explicit images that was ultimately uploaded to his employer's network when he performed a back-up procedure on March 23, 2023. *Id.* He admitted to the DOE Psychologist that he should have realized his directory of sexually explicit images would get backed up to his employer's network, but "he was not thinking multiple steps ahead or considering consequences at the time because he was so depressed." *Id.* He admitted that he knew his conduct violated his employer's rules, but "did not think it was 'very wrong' to have adult images on an unclassified [] computer," asserted that his employer "was spying on him 'a little too much' given that the systems were unclassified," and compared the interview with his employer following the discovery of his conduct to "the Spanish Inquisition." *Id.* at 33.

In the clinical interview, the Individual characterized his mood as “sad.” *Id.* at 37. He endorsed “despondence, a sense of despair and hopelessness, lack of motivation and caring about the future, lack of focus and mental sharpness, paucity of thought and generativity, and difficulty redirecting himself.” *Id.* He also admitted to suicidal ideation but denied having “intent or an imminent plan.” *Id.*

On February 15, 2024, the DOE Psychologist contacted the Individual’s Psychiatrist. *Id.* at 35. The Individual’s Psychiatrist told the DOE Psychologist that he believed that the Individual’s “mood had been largely stable” from 2022 to 2023. *Id.* When asked at the hearing about the Individual’s Psychiatrist’s understanding of his psychological well-being from 2022 to 2023, the Individual testified that he generally does not “want people to worry” about him and so he “didn’t talk about [his] depression” with people “even includ[ing] [] the [Individual’s Psychiatrist].” Tr. at 100. He further added that he would “tell [the Individual’s Psychiatrist] how depressed [he was] . . . but [] avoid embellishing . . . or overstating” and that he believed that the Individual’s Psychiatrist “was able to read [his] mood . . . .” *Id.*

In her Report, the DOE Psychologist opined that, despite the significant negative consequences of his actions, the Individual “remain[ed] under-resourced and undertreated” for his depression and ADHD. Ex. 7 at 37. The DOE Psychologist cited the Individual’s “lack of skill in communicating his emotional state and/or his lapse in judgment” and failure to be “fully open and honest with [the Individual’s Psychiatrist]” as factors contributing to the undertreatment of the Individual’s conditions. *Id.* The DOE Psychologist also opined that the Individual was “experiencing a major depressive episode at a moderate to severe level,” the symptoms of which were “contributing to impaired judgment and trustworthiness to comply with rules and policies,” and that his prognosis was “guarded to poor.” *Id.* She indicated that his prognosis “would likely be improved if he were to add evidence-based psychotherapy to his treatment.” *Id.*

By letter dated October 3, 2024, the Individual’s Psychiatrist indicated that his last meeting with the Individual was on October 1, 2024, and that the Individual’s “presentation [was] consistent with [major depressive disorder and ADHD].” Ex. F. The letter also indicated the Individual’s mood has been stable, the Individual has been compliant with his medications and treatment, and he did not “foresee any imminent decompensation in [the Individual’s] mental health.” *Id.*

The Individual testified at the hearing that he had experienced feelings of “depressive anger” and irritability which had persisted for an extended period but abated after medication changes, including fully substituting another medication for Adderall in September 2024, and that, as of the date of the hearing, he was experiencing only two symptoms listed in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, diagnostic criteria for major depressive disorder (difficulty sleeping and fatigue or loss of energy nearly every day). Tr. at 62, 114; *see also* Ex. O (reflecting documentation of prescriptions filled by the Individual since 2021). The Individual testified extensively and offered articles, documentation of changes in his prescribed medication, and other evidence to argue that, based on information he had learned after meeting with the DOE Psychologist in February 2024, the DOE Psychologist had misidentified his symptoms as a depressive episode and that his symptoms were more likely attributable to side effects of Adderall prescribed to him by the Individual’s Psychiatrist in March 2022. *Id.* at 64–72, 76–77; Ex. B; Ex.

C; Ex. H; Ex. L; Ex. N; Ex. O; Ex. P; Ex. S.<sup>5</sup> The Individual indicated that he would never use Adderall again, and that he would continue to see the Individual's Psychiatrist for "the foreseeable future." Tr. at 76–77. He also testified that he was engaging with friends and relatives more and could rely on them, as well as his wife, as his support network. *Id.* at 79–80, 108–09. He indicated that he was being more forthcoming with people, including the Individual's Psychiatrist, about his feelings of depression and that he had come to realize that "[p]eople are going to worry, and sometimes you just have to let them hopefully not worry too much." *Id.* at 102.

The Individual did not pursue psychotherapy despite having read the DOE Psychologist's opinion in the Report that doing so would improve his prognosis. *Id.* at 115–16. The Individual testified that he did not believe himself to be one of "the kind of people that it's supposed to work for" and that he did not believe that it was necessary for him to do so in light of the improvements to his symptoms since having changed his medication. *Id.*

The Individual testified that, since the March 2023 incident, he had purchased a personal computer and "drawn a strong line between [his] personal computation and [his] work computation." *Id.* at 77. The Individual also indicated that he had ceased working from home and was exclusively working at the DOE site. *Id.* at 78.

The Individual's wife testified that she had noticed the Individual was irritable, tired, and that his mood was "down" in late 2023 and that this was the worst period of depression that she had observed in the Individual in the thirteen years they had known each other. *Id.* at 21–22, 25, 30, 44. She attributed these behaviors to his mental health and observed improvements in the Individual's well-being in the spring of 2024 when she perceived him as more upbeat and sociable. *Id.* at 24–25, 45. If the Individual's wife perceived a significant adverse change in the Individual's behavior in the future, she would ask him if he had made any changes to his medication regimen and encourage him to speak to the Individual's Psychiatrist. *Id.* at 26.

The DOE Psychologist opined that the Individual's major depressive disorder was in partial, but not full, remission based on the recency of the abatement of his symptoms. *Id.* at 120–21. She indicated that the Individual's self-described improvements to his symptoms, increased use of his support network, and acknowledgement of the shame he experienced in connection with the transfer of sexually explicit images to the DOE site's network were all positive towards his recovery. *Id.* at 122. However, she cited the Individual's previous lack of transparency in communicating his symptoms to the Individual's Psychiatrist, desire not to worry others, and resistance to psychotherapy as potential indicators of defensiveness and minimization regarding his mental status. *Id.* at 122–24.

The DOE Psychologist opined that the Individual's probability of experiencing another depressive episode in the future was "very high." *Id.* at 127. She opined that the Individual's prognosis for managing such an episode was "fair," but indicated that this improvement to the Individual's

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<sup>5</sup> The Individual noted several articles he had written on neuroscience topics in an attempt to qualify himself as an expert for the purpose of offering an opinion on the effect that Adderall may have had on his behavior. Tr. at 54–60; Ex. A at 10–15; Ex. V. However, the information provided by the Individual was insufficient for me to conclude that he had sufficient knowledge, skill, experience, training, or education to offer an expert opinion on whether his symptoms were likely attributable to the side effects of Adderall. Tr. at 74.

prognosis from the prognosis she provided in her Report was conditional upon the Individual communicating openly with the Individual's Psychiatrist. *Id.* at 125.

## V. ANALYSIS

### A. Guideline I

Conditions that could mitigate security concerns 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 amendable 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.

While the Individual's major depressive disorder is controllable with treatment and the Individual is receiving treatment, the DOE Psychologist opined that the condition is only in partial remission in light of the recency of the improvement to the Individual's symptoms. Moreover, she opined that the Individual's prognosis was only fair in light of his history of defensiveness and minimization of his mental health symptoms and decision not to address these issues through psychotherapy. Although the Individual asserted that the psychological symptoms he experienced in 2022 and 2023 were related to his prescribed Adderall and not to a depressive episode, and thus that the situation was a temporary one resolved by his medication change, this claim is insufficiently supported for me to credit this explanation over that offered by the DOE Psychologist.

Although the Individual's Psychiatrist indicated that the Individual's condition is stable and that the Individual has taken his medication as prescribed, the adjustment to the Individual's medication which the Individual credited for improving his symptoms occurred approximately one month prior to the hearing. Moreover, in the absence of testimony from the Individual's Psychiatrist, it is unclear whether the Individual has been more forthcoming with him than when the Individual's Psychiatrist lacked knowledge of the symptoms the Individual reported to the

DOE Psychologist in February 2024 or whether the Individual's Psychiatrist would endorse the psychotherapy recommended by the DOE Psychologist. In light of the recency of the improvements to the Individual's symptoms and his decision not to engage in the psychotherapy the DOE Psychologist opined would be beneficial, I find that the Individual has not established the applicability of the first mitigating condition. *Id.* at ¶ 29(a). The second mitigating condition is not applicable because the DOE Psychologist's prognosis for the Individual's ability to manage future depressive episodes was less than positive. *Id.* at ¶ 29(b).

The third mitigating condition is inapplicable because the DOE Psychologist opined that it is highly probable that the Individual will experience a recurrence of a depressive episode. *Id.* at ¶ 29(c). The fourth mitigating condition is irrelevant to the facts of this case because there is no indication that major depressive disorder is a temporary condition. *Id.* at ¶ 29(d). As the Individual's major depressive disorder is an ongoing condition, and the DOE Psychologist has raised reasonable doubt as to the Individual's ability to manage future episodes of depression, I find the fifth mitigating condition inapplicable. *Id.* at ¶ 29(e).

Having concluded that none of the mitigating conditions is applicable, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

## **B. Guideline M**

Conditions that could mitigate security concerns under Guideline M include:

- (a) So much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) The misuse was minor and done solely in the interest of organization efficiency and effectiveness;
- (c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification to appropriate personnel; and
- (d) The misuse was due to improper or inadequate training or unclear instructions.

Adjudicative Guidelines at ¶ 41.

In applying the Adjudicative Guidelines, I am required to consider, among other things, the "nature, extent, and seriousness of the conduct" and "the age and maturity of the individual at the time of the conduct." 10 C.F.R. § 710.7(c). The Individual's careless behavior was a serious violation of his employer's cybersecurity policies. Moreover, the Individual himself is a distinguished professional with decades of experience and significant responsibilities. *See Ex. A* (reflecting the Individual's role at the DOE site and professional experience). Taking into account the seriousness of the Individual's conduct and his age and maturity at the time of the conduct, I find that the passage of less than two years since the Individual's conduct is insufficient for me to conclude that the passage of time, in of itself, mitigates the security concerns.



Although the Individual has attempted to establish a link between his mental health and his conduct such that I might conclude that his conduct occurred under unusual circumstances, I am not convinced that this is the case. The Individual's self-described symptoms are not obviously directly connected to his conduct, and the Individual's characterization of his attempts to create generative pornography as a coping mechanism for his symptoms is too attenuated for me to attribute this behavior to his mental health.<sup>6</sup> Even if there was a more direct connection between the Individual's conduct and his mental health, the Individual has not sufficiently resolved the concerns related to his mental health for the reasons described above and therefore I could not conclude that future lapses of judgment are unlikely to recur when the Individual experiences exacerbation of his major depressive disorder. Accordingly, I find the first mitigating condition inapplicable. Adjudicative Guidelines at ¶ 41(a).

As indicated above, the Individual's conduct was a serious violation of his employer's cybersecurity policies and therefore the second mitigating condition is inapplicable. *Id.* at ¶ 41(b). While the Individual's conduct was certainly unintentional, the Individual was unaware of what had occurred until he was interviewed regarding the event more than six months after the fact and therefore, he cannot be said to have promptly notified appropriate personnel to correct the issue. Thus, the third mitigating condition is inapplicable. *Id.* at ¶ 41(c). The fourth mitigating condition is inapplicable because the Individual does not assert that improper or inadequate instructions or training resulted in his uploading sexually explicit images to the DOE site's network. *Id.* at ¶ 41(d).

For the aforementioned reasons, none of the mitigating conditions is applicable to the facts of this case. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline M.

## VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines I and M of the Adjudicative Guidelines. After considering all 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 asserted by the LSO under Guidelines I or M. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals

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<sup>6</sup> There is some suggestion from the DOE Psychologist that the Individual's "despondency" from depression might have contributed to his lapse in judgment. Ex. 7 at 37. To the contrary, the Individual testified that at the time of his conduct he was unaware that software his employer used to back up data, which he characterized as "spyware," would back up the sexually explicit files, and he did not "think it would actually go in and back up a cloud drive to a cloud because . . . the [sexually explicit] data [was] already on a cloud." Tr. at 82-83. This suggests that the Individual believed that his conduct would escape detection and that a lack of knowledge on the part of the Individual resulted in the sexually explicit images being saved to the DOE site's network rather than a lack of fear of consequences.