



Individual's Psychologist had opined that the Individual had a condition that could impair his judgement, reliability, or ability to properly safeguard classified national security information. *Id.*

The local security office (LSO) referred the Individual to a DOE-contractor psychologist (DOE Psychologist) for a psychological evaluation. Ex. 8 at 1. Following a clinical interview of the Individual, the DOE Psychologist issued a psychological evaluation (Report) in which he opined that the Individual met the diagnostic criteria for Autism Spectrum Disorder under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 4–5. The DOE Psychologist further opined that this condition could impair the Individual's judgment, stability, reliability, or trustworthiness. *Id.*

On March 26, 2020, the LSO issued the Individual a letter in which it indicated 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 (Psychological Conditions) of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted ten numbered exhibits (Ex. 1–10) into the record and presented the testimony of the DOE Psychologist. The Individual submitted eighteen lettered exhibits (Ex. A–R) into the record and offered the testimony of four witnesses, including his own.

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

The LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the basis for denying the Individual a security clearance. Ex. 2.

“Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. The Summary of Security Concerns listed as relevant security concerns: the DOE Psychologist's opinion that the Individual met the diagnostic criteria for Autism Spectrum Disorder under the *DSM-5* and that this condition impaired his judgment, reliability, or trustworthiness; the Individual's Psychologist's statement to the OPM investigator that she believed that the Individual had a condition that impaired his judgment, reliability, or trustworthiness; and the Individual's inpatient hospitalization for mental health treatment. Ex. 2 at 1–2. The DOE Psychologist's opinion that the Individual has a condition that may impair his judgment, stability, reliability, or trustworthiness, as well as the Individual's inpatient mental health treatment, justify the LSO's invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b)–(c).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting

or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (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 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. 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.

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

On June 21, 2017, the Individual signed the e-QIP on which he disclosed that he had received mental health treatment. Ex. 9 at 26–27, 35. The Individual indicated that he began seeing the Individual's Psychiatrist in 2004 due to a “seizure disorder.” *Id.* at 27. According to the Individual, he had not experienced a seizure for approximately nine years, and only saw the Individual's Psychiatrist occasionally for medication reviews. *Id.* The Individual also disclosed that he had received inpatient treatment when he was “having a hard time coping” as a teenager. *Id.* The Individual reported that he had received treatment from the Individual's Psychologist, and that he continued to consult with her as of the date that he completed the e-QIP. *Id.* at 27–28.

In the ROI, an OPM investigator reported interviewing the Individual's Psychologist on October 11, 2018. Ex. 5 at 16. According to the ROI, the Individual's Psychologist diagnosed the Individual with “Pervasive Development Disorder.” *Id.* at 17. The ROI reflected the Individual's Psychologist's opinion that the Individual's prognosis was “good,” but also contained a notation that the Individual's condition “could impair his [] judgement, reliability, or ability to properly safeguard classified national security information.” *Id.* at 16–17. The OPM investigator interviewed the Individual's Psychiatrist on October 31, 2018. *Id.* at 16. The Individual's Psychiatrist reported that the Individual's prognosis was “ok,” and that he did not believe that the Individual had a condition that could impair his judgment, reliability, or trustworthiness. *Id.*

On February 4, 2019, the Individual met with the DOE Psychologist for a clinical interview. Ex. 8 at 2.<sup>3</sup> During the clinical interview, the Individual reported that he had experienced social difficulties as an adolescent. *Id.* at 2. The Individual characterized his behavior as “aggressive” towards those who invaded his space or made him feel threatened, and recounted an occasion on which he head butted a school official who attempted to restrain him. *Id.*

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<sup>3</sup> The DOE Psychologist's Report indicated that the clinical interview was approximately ninety minutes in duration. Ex. 8 at 2. During the hearing, the DOE Psychologist indicated that the clinical interview was in fact forty-five to sixty minutes in length and that the duration of the interview estimated in the Report was an error. Tr. at 185.

The Individual reported never having a romantic relationship and also reported that, as of the date of the clinical interview, he was not in contact with any friends. *Id.* at 2–3. The Individual expressed regret for his adolescent behavior, and the desire to have better social skills. *Id.* at 3. However, for the time being, the Individual reported that he preferred doing things alone or with his family. *Id.* The Individual reported that he had a job working in a grocery store, but that he did not like the job because his supervisors criticized him for the way he interacts with customers and “always believe the customers.” *Id.* at 2.

The Individual was unable to explain why he needed a security clearance for a position in a secure facility. *Id.* at 3. However, the Individual represented that he would never disclose secrets about his position. *Id.* The Individual was also unable to remember all of the medications he had been prescribed. *Id.*

Following the clinical interview, the DOE Psychologist issued his Report in which he concluded that the Individual met five of the diagnostic criteria for Autism Spectrum Disorder under the *DSM-5*. The DOE Psychologist noted that his diagnosis was informed by the Individual’s self-described dissatisfaction with his social interactions and problems with impulse control, as well as the Individual’s difficulties in understanding or adapting to complex situations. *Id.* at 4. The DOE Psychologist opined that Autism Spectrum Disorder was a developmental disorder that was unlikely to improve with treatment. *Id.* at 4–5.

On July 30, 2020, the Individual’s Psychologist executed a declaration in which she denied that she had ever spoken with an OPM investigator or ever represented that the Individual had a psychological condition that could impair his judgment. Ex. B at 6.<sup>4</sup> Furthermore, the Individual’s Psychologist asserted that she had spoken with the DOE Psychologist and told him that she did not believe that the Individual’s judgment or reliability was compromised. *Id.*<sup>5</sup> The Individual’s Psychologist opined that the Individual was psychiatrically stable, had made significant strides in his social skills, and was not affected by a psychological condition that compromised his judgment or reliability. *Id.* at Bates 6–7.

## **V. HEARING TESTIMONY**

The Individual’s job coach, who provides assistance to disabled individuals in finding and maintaining employment, testified that he found the Individual easy to work with and that he had received feedback that the Individual is an exemplary employee at a grocery store where he currently works. Tr. at 15–18, 22. The job coach testified that he was aware of two occasions on which customers had lodged minor complaints with the grocery store’s management about the Individual’s conduct on the job, one involving the Individual speaking too loudly when serving a customer and the other concerning a customer striking with her car shopping carts the Individual

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<sup>4</sup> The Individual submitted his exhibits as a single document, with exhibits separated by pages indicating the applicable exhibit. This decision will refer to the pagination of the document, rather than any page numbers printed on the exhibits, when citing to the Individual’s exhibits.

<sup>5</sup> The DOE Psychologist explained during the hearing that he spoke with the Individual’s Psychologist after he had prepared his Report, and that he would have revised his opinion had he learned anything from the Individual’s Psychologist that substantially changed anything reflected in the Report. Tr. at 168–69.

was pushing, but that he was unaware of the Individual ever violating rules or being subject to discipline at work. *Id.* at 20–23.

The Individual testified that the two incidents cited by the job coach were the only instances in which he had ever had issues in his current job, and that he had never been disciplined for misconduct on the job. *Id.* at 42. The Individual testified that he had a positive relationship with his managers. *Id.* at 43; *see also* Ex. N at 36 (reflecting the opinion of the Individual’s manager at the grocery store that the Individual is a dedicated and reliable employee). The Individual testified that he also works for a DOE contractor in a position that does not require a security clearance, but that he has applied for a position that would require a security clearance. Tr. at 44–47. When asked to describe how he had handled unexpected situations at work with the DOE contractor in the unsecured location, the Individual provided testimony about a time when rules had changed at his workplace but did not offer an example of how he had acted in an uncertain situation. *Id.* at 73–74.

The Individual testified that he understood that he needed a security clearance to work at a secure facility, and that he would immediately notify his supervisor if he observed any inappropriate or unauthorized behavior on site. *Id.* at 61–62. The Individual initially testified that he would tell the Individual’s Psychologist, who he trusted, about what was going on at the secure facility if asked before clarifying on further examination that he would only tell the Individual’s Psychologist about interactions with coworkers and not classified material. *Id.* at 70.

The Individual testified that he was managing his psychological conditions with medication and that he did not believe that the conditions affected his ability to work or to follow rules. *Id.* at 48–49. The Individual explained that he met with the Individual’s Psychiatrist “every couple months” for approximately fifteen to twenty minutes to manage his medication and update him on life events. *Id.* at 49–50, 89. The Individual reported that he previously met with the Individual’s Psychologist every six to eight weeks for psychological treatment. *Id.* at 49–50; *see also* Ex. R at 44–118 (progress notes prepared by the Individual’s Psychologist after each of their sessions since 2013). However, the Individual testified that he had interacted with the clinicians less frequently since the COVID-19 pandemic and did not see any reason to consult with them more than occasionally because he had demonstrated that he could “handle himself.” Tr. at 84–87; *see also* Ex. R at 118 (showing that the Individual’s Psychologist’s last progress note was dated January 30, 2020). The Individual also testified that numerous friends, family, teachers, and members of his community believed in his trustworthiness and reliability. Tr. at 53–59; *see also* Exs. D–Q at 11–42 (letters of support for the Individual lauding his reliability, trustworthiness, and good character).

The Individual reported that he had not developed friendships, but that he had positive relationships with his coworkers at the grocery store. Tr. at 72. The Individual expressed that he struggled to make friends when he was younger due to social stigma stemming from his autism, and that he had decided that it was not worth having people like that in his life. *Id.* The Individual described an incident in which public safety officials at a college he was attending interviewed him after he created a social media post directed toward everyone in his college program in an effort to make connections. *Id.* at 66–67; Ex. R at 71. The Individual reported that he no longer

posted on social media after the experience, and he only used social media to learn about public figures. *Id.* at 68.

The Individual's Psychiatrist testified that the Individual had been his patient for sixteen years, and that he was treating the Individual for Asperger's Syndrome and Obsessive-Compulsive Disorder. *Id.* at 93–96.<sup>6</sup> The Individual's Psychiatrist reported that the Individual "had or has bipolar disorder [] not otherwise specified," but that he had not observed symptoms of Bipolar Disorder in the Individual in four or five years. *Id.* at 96. The Individual's Psychiatrist opined that the Individual's mood-related symptoms that led to the diagnosis of Bipolar Disorder may have been attributable to the combination of Asperger's Syndrome and adolescent development. *Id.* The Individual's Psychiatrist testified that he found the Individual to be stable, and that he "would give him a positive recommendation." *Id.* at 95.

The Individual's Psychiatrist explained that Asperger's Syndrome is a chronic condition and that the Individual continued to display symptoms of the condition. *Id.* at 100. The Individual's Psychiatrist testified that individuals with Asperger's Syndrome sometimes experience difficulty understanding complex emotions or the emotional state of others, and consequentially they sometimes behave inappropriately when interacting with others. *Id.* at 101–02. However, the Individual's Psychiatrist expressed the opinion that the Individual functioned at a higher level than patients with Asperger's Syndrome who experience significant occupational impairment, had improved in his ability to understand others, and had not behaved inappropriately in social situations for several years. *Id.* at 101–02, 07–08.

The Individual's mother, who is employed by the DOE contractor, testified that the Individual was a reliable and trustworthy person and that she believed that he could easily carry out the job duties required by the DOE contractor. *Id.* at 130–32. The Individual's mother testified that she had not observed the Individual behave inappropriately in social situations "as of late." *Id.* at 134–35. When asked about notes from the Individual's Psychologist's meetings with the Individual which indicated that the Individual's mother had attended the sessions to seek assistance regarding the Individual's inappropriate behavior, the Individual's mother indicated that she could not recall the behavior that gave rise to the notes from 2018 but speculated that they may have concerned behaviors in which the Individual engaged around the house to annoy her. *Id.* at 135–36; *see also* Ex. R at 108 (indicating that the Individual's mother expressed frustration with the Individual's "continued patterned behaviors" and that the Individual "continues to use his Autism for an excuse to not know right from wrong"). The Individual's mother admitted that she did recall one incident of inappropriate behavior by the Individual, referenced in the Individual's Psychologist's notes from 2017, in which the Individual acted rudely towards a young woman and told her that he did not want to talk to her because he believed that his mother wanted him to marry her. *Tr.* at 137–38; *see also* Ex. R at 100 (noting that the Individual's mother recounted the incident to the Individual's Psychologist).

The DOE Psychologist testified last, after observing the entire hearing and all of the testimony offered therein. The DOE Psychologist testified that, while he did not disagree with the diagnoses

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<sup>6</sup> The Individual's Psychiatrist acknowledged that the DSM-5 did not recognize Asperger's Syndrome as a diagnosable condition, and that the Individual met the diagnostic criteria for Autism Spectrum Disorder under the *DSM-5*. *Id.* at 104–05.

offered by the Individual's Psychologist or the Individual's Psychiatrist, he reached a different conclusion as to the Individual's level of functioning because he was evaluating the Individual relative to the expectations for a security clearance holder while the Individual's clinicians were evaluating him purely from a clinical perspective. Tr. at 158–60. The DOE Psychologist explained that persons diagnosed with Autism Spectrum Disorder often experience difficulties understanding what others are thinking, feeling, or expressing, and that such people are easier to manipulate than an average person because they do not as easily recognize that they are being manipulated. *Id.* at 161–63.

The DOE Psychologist acknowledged that the Individual's understanding of social conventions and cues may have improved over the years. *Id.* at 164. However, the DOE Psychologist opined that the Individual's inability during the clinical interview to consider that managers, teachers, and friends may experience his behavior differently than he does, as well as his self-described persistent social impairment, indicated a lack of understanding of complex or subtle situations that could expose him to risk of exploitation in a security context. *Id.* at 163–65, 95–96. For example, the DOE Psychologist suggested that the Individual might be unable to discern classified from unclassified information without explicit instructions, and that he might unwittingly reveal classified information that he had not been specifically instructed to maintain as secret. *Id.* at 166. While recognizing the Individual's personal achievements despite his condition, and the competence of his clinicians, the DOE Psychologist nevertheless maintained that he felt "that there would be reasons to be cautious about [the Individual] working in a high security environment." *Id.* at 187. The DOE Psychologist opined that the Individual's prognosis was positive for future improvement to his functioning, but that he was uncertain how much improvement that would entail and how long it would take for the Individual to realize the improvements. *Id.* at 196–97.

## **VI. ANALYSIS**

### **A. Guideline I**

The DOE Psychologist's opinion that the Individual's Autism Spectrum Disorder may impair his judgment, stability, reliability, or trustworthiness, and the Individual's inpatient treatment for a psychological condition, raise security concerns under Guideline I. Adjudicative Guidelines at ¶ 28(b)–(c). 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).

The Individual's inpatient treatment for a psychological condition occurred when the Individual was a minor, over ten years ago, and there is no indication in the record that the emotional issues that led to the Individual's hospitalization have reoccurred for many years. The Individual's Psychiatrist testified that the Individual previously displayed emotional and behavioral symptoms of a bipolar disorder, but, whether through treatment, maturation, or both, has not experienced these symptoms for at least four years. Whatever the causes of the Individual's previous emotional instability, I find that the passage of time without recurrence of the symptoms and the opinion of the Individual's Psychiatrist that the Individual is stable and has a positive prognosis are sufficient to mitigate the security concerns associated with his prior hospitalization. *Id.* at ¶ 29(d)–(e).

Both the Individual's Psychiatrist and the DOE Psychologist concurred that the Individual was properly diagnosed with Autism Spectrum Disorder, that the condition is a chronic one and not a temporary one, and that the Individual currently displays symptoms of the condition. Therefore, the mitigating conditions under Guideline I relating to temporary conditions are inapplicable in this case. *Id.* at ¶ 29(c)–(d). Thus, the potential mitigating conditions concern the extent to which the Individual's Autism Spectrum Disorder is controllable with treatment and whether there are indications of a current problem. *Id.* at ¶ 29(a)–(b), (e).

The DOE Psychologist expressed concerns that the Individual's inability to understand complex social situations or to identify information he was not to disclose without direct instruction placed him at risk of inadvertently compromising security.<sup>7</sup> The Individual displayed some behaviors that tended to support these concerns during the hearing. For example, the Individual was unable to provide an example of adapting to unexpected events at work when asked, and instead described a time when rules changed and he modified his conduct to comply with the rule change. The Individual also testified that he would share information about goings on at the secure facility with the Individual's Psychologist before revising his testimony to indicate that he meant that he would share interpersonal interactions and not classified information.

While the Individual's Psychiatrist testified that the Individual was functioning at a high level and had not behaved inappropriately in a social situation for several years, the Individual's Psychiatrist does not interact with the Individual sufficiently frequently or in sufficient depth for me to rely on his opinion. According to the Individual, his meetings with the Individual's Psychiatrist are brief, focused primarily on adjusting his medication, and separated by months at a time. A significant

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<sup>7</sup> I place minimal weight on the DOE Psychologist's conclusion that the Individual's condition placed him at risk of inadvertently compromising security. That conclusion goes beyond establishing that the Individual has a psychological condition that can impair his judgment, reliability, or trustworthiness. Ultimately, it is my prerogative to determine whether the evidence, which includes the DOE Psychologist's diagnosis and its foundation, demonstrates that the Individual has a psychological condition which presents a national security concern. 10 C.F.R. § 710.27.

portion of the record evidence concerning the Individual's prior social problems and subsequent functioning are drawn from the Individual's Psychologist's progress notes.

Absent the testimony of the Individual's Psychologist, critical questions concerning the Individual's progress and status are unanswered. For example, the Individual testified during the hearing about an incident some years ago in which he contacted college classmates on social media which resulted in a misunderstanding as to his intentions and led to him being interviewed by public safety personnel at the college. The Individual testified that he had modified his behavior on social media as a result of that event. However, the second most recent progress note from the Individual's Psychologist observed that the Individual "continued struggles with some inappropriate social interactions through social media and decisions regarding social etiquette . . . ." Ex. R at 117. This information is directly contradictory to the Individual's claims in the hearing to have modified his social media practices, and raises doubts about the Individual's progress in learning appropriate social interactions. Without the testimony of the Individual's Psychologist, I lack sufficient information concerning the Individual's progress and status to conclude that his condition is being controlled with treatment or that there is no indication of a current problem.

In the absence of detailed, up-to-date information from a clinician on the Individual's management of his Autism Spectrum Disorder, doubts persist that the Individual possesses sufficient social discernment and abstract thinking skills to act with the judgment and reliability required of a security clearance holder. While the Individual provided a plethora of evidence in support of his good character and job skills from his job coach, mother, and the various authors of the letters of support admitted into evidence, this information does not resolve the concerns raised by the DOE Psychologist's opinion. While the Individual may possess excellent personal characteristics and work ethic, these positive character traits do not establish that his Autism Spectrum Disorder will not impair his judgment and reliability. Accordingly, in light of the absence of current clinical information from the Individual's Psychologist, I must resolve my doubts in favor of national security and conclude that the Individual has not established the applicability of the mitigating conditions under Guideline I.

For the aforementioned reasons, I find that the Individual has mitigated the security concerns related to his inpatient treatment for a psychological condition, but that none of the mitigating conditions under Guideline I are applicable to the security concerns associated with his Autism Spectrum Disorder. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

## **VII. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the

Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals