

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: February 6, 2024)	Case No.: PSH-24-0060
)	
_____)	

Issued: June 21, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ 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 granted.

I. Background

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance adjudication process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in January 2023. Exhibit (Ex.) 9. In his QNSP, the Individual disclosed that he was terminated from a position in September of 2022. *Id.* at 84. He stated that he "was not really provided any details for the reason" behind why he was terminated, "other than inconsistency." *Id.* He indicated that his "[t]ermination letter stated" that his former employer "can dismiss employees with little or . . . no reason at all during the probationary period." *Id.*

In March 2023, the Individual underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator. *Id.* at 126. The Local Security Office (LSO) subsequently asked the Individual to respond to a Letter of Interrogatory (LOI), which he signed and submitted in August 2023. Ex. 6. Following the LOI, the LSO asked the Individual to undergo a psychological evaluation, which was conducted by a DOE-consultant psychologist (DOE Psychologist) in

¹ 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.

September 2023. Ex. 7. The DOE Psychologist issued a report (the Report) the same month, which indicated that while the Individual did not meet the criteria for a *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition, Text Revision* (DSM-5-TR) diagnosis, he exhibited “a constellation of cognitions, emotions, and behaviors suggestive of a mental condition that has impaired his judgement, reliability, emotional stability, and trustworthiness.” *Id.* at 40.

The LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines E (Personal Conduct) and I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of five other witnesses. *See* Transcript of Hearing, OHA Case No. PSH-24-0060 (hereinafter cited as “Tr.”). The Individual submitted one exhibit, which was marked as Exhibit A. The DOE Counsel submitted nine exhibits marked as Exhibits 1 through 9 and presented the testimony of the DOE Psychologist.

II. Notification Letter

A. Guideline E

Under Guideline E, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is:

[c]redible adverse information that is not explicitly covered under any other guidelines . . . but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, considerations of . . . [a]ny disruptive . . . or other inappropriate behavior.

Id. at ¶ 16(d)(2).

Under Guideline E, the LSO alleged that the Individual was terminated from a previous position because he violated organizational policies, despite being aware of those policies. Ex. 1 at 5. As

explained below, I find that the LSO's allegations are insufficiently developed to raise a security concerns under Guideline E.

B. Guideline I

Under Guideline I, “[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[b]ehavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline.” *Id.* at ¶ 28(a). Under Guideline I, the LSO alleged that the DOE Psychologist concluded that the Individual displays distorted thinking and has shown poor judgment in ways that suggest “a constellation of cognitions, emotions, and behaviors suggestive of a mental condition that has impaired his judgement, reliability, emotional stability, and trustworthiness.” Ex. 1 at 5. The LSO's invocation of Guideline I is 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 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 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 and Hearing Testimony

In September 2022, the Individual was terminated from his position with a former employer.² Ex. 9 at 84. The Individual stated in his QNSP that he was “not provided with any details” about why he was terminated. *Id.* The investigator’s report indicates that the Individual told the investigator that he had not been issued any reprimands or warnings prior to his termination, and that he “had no indication that anything was wrong with his employment[.]” *Id.* at 126. When he was handed his letter of termination, he asked his supervisor why he was being terminated, and “all that she would say is ‘inconsistency.’”³ *Id.*; Ex. 6 at 26; Tr. at 69–70. The Individual’s former supervisor told the investigator that the Individual was terminated because he disclosed a “conflict of his morals,” as he was not permitted “to preach during community outreach.”⁴ Ex. 9. at 141. Because the Individual’s former employer was required to maintain the separation of church and state, the Individual was terminated.⁵ *Id.*

The Individual indicated in his hearing testimony that he believed that he “was terminated due to the expressions of [his] faith that [he] shared[.]” and for having expressed concern over working on the sabbath. Tr. at 70–71, 82. The Individual clarified that he initially shared his concerns over working on the sabbath, even though he was never ordered to do so, then “one time in particular” he attempted “to share the gospel” with his management during a meeting. *Id.* at 82. He feels that he was terminated because he shared the gospel in a manner “that [he would not] today[.]” *Id.* at 71, 142. The Individual testified that at the time, he “always [had] a desire to bring up [his faith] somehow . . . just bringing God into conversation about things.” *Id.* at 142–43. He testified that he never received a full explanation as to why he was terminated. *Id.* at 86. When asked what he would do differently, if anything at all, while still in the employ of his former employer, the Individual stated that he would seek “to find another work position” and to “seek more counsel from friends and peers[.]” *Id.* at 98, 141.

In his LOI response, the Individual indicated that he violated “rules, regulations, and/or policies” while working at the former employer. Ex. 6 at 26. When asked to explain, he did not specify which rules, regulations, and/or policies he violated or say how he violated them. *Id.* Instead, the Individual stated that his father had told him to refrain from mentioning “religion . . . in the workplace” and that he was not referring “to any institutional rule, regulation, and/or policy of [his former employer].” *Id.* Rather, he stated that he “only speaks of the parental institution that [he] chose to disavow.” *Id.* Later in the LOI response, the Individual indicated that he did not “knowingly violate the rule(s), regulation(s), and/or policy” of his former employer. Ex. 6 at 27. After giving the matter thought at the hearing, the Individual stated that “in retrospect, [he] caused confusion in answering this question because [he did not] place relevancy on the workplace because [that is] something [he] actually [knew] much less about.” Tr. at 87. He clarified by

² During his testimony, the Individual stated that his employment began in July 2022. Tr. at 69

³ He testified that his termination letter indicated that according to his employer’s policies, he could be terminated “with little to no reason at all” during the probationary period. Tr. at 140. The probationary period was six months. *Id.*

⁴ The Individual testified that he neither asked to nor did he actually preach at a community event. Tr. at 81, 138–39. He does not have any insight as to why his former supervisor would make such a statement to the investigator. *Id.*

⁵ The Individual’s former manager also stated that the Individual “had trouble regulating his emotional intensity when interacting with coworkers and supervisors.” Ex. 9 at 141.

indicating that he does not know if he violated a regulation or policy prior to his termination. *Id.* at 88–89.

When asked in the LOI whether his character for honesty or trustworthiness had ever come into question, the Individual stated that it had in the context of past relationships, and that the “[l]ack of trust [was] likely due to impurity[.]”⁶ *Id.* at 27. He went on to indicate that in order to assure the DOE of his honesty, trustworthiness, and reliability, and general ability to protect classified information, he indicated that he would “work to communicate and act on [his] ability,” that he will “honor the sanctity[,] bidding to safety,” and that he would “acknowledg[e] past shortcomings and learn[] after reproof to press on under the responsibility given to [him].”⁷ *Id.* at 28.

In September of 2023, the Individual underwent a psychological evaluation.⁸ Ex. 7 at 36. The Individual reported that his belief system had caused tension with his parents, who do not have the same views as him.⁹ *Id.* For example, the Individual stated that his father discouraged him from expressing his personal religious convictions at work meetings.¹⁰ *Id.* at 37. The Individual disagreed with his father’s advice. *Id.*

The Individual also told the DOE Psychologist that he did not have any formal mental health diagnoses but said he has struggled with anxiety since he was a teenager. *Id.* In 2019 and 2020, the Individual stated that he had some “situationally based” suicidal ideation and thoughts of self-harm, including a time when he considered harming his eye based on a biblical verse after having thoughts about a woman he saw while out in public.¹¹ *Id.* at 37–38. The Individual also reported

⁶ At the hearing, when asked what he meant by this answer, the Individual stated that he was “trying to go back to what [he] was thinking at the time when [he] wrote that.” Tr. at 94. He later said that he was “even wondering why he wrote” this answer. *Id.* When asked about his response again, the Individual could only surmise that he “was trying to bring to light . . . how, when relationships get kind of messy, things get kind of confusing.” *Id.* at 95.

⁷ When asked what he meant by this response, the Individual indicated that he meant that if he is needed and he is able, then he would “seek[] to communicate that and make [himself] known, in terms of reliability and actually being there[.]” Tr. at 96. Regarding the use of his word “sanctity,” he stated that he meant “the sanctity of relations among people internationally.” *Id.* at 97.

⁸ During the evaluation, the DOE Psychologist conducted the Minnesota Multiphasic Personality Inventory-3, the results of which were “invalid,” as there was “evidence of excessive inconsistency because of variable responding to the . . . items.” Ex. 7 at 39.

⁹ The Individual’s mother testified that around 2020 or 2021, the Individual began questioning the faith tradition with which he was raised, and incidents of friction and disagreement increased as he began evangelizing to his family. Tr. at 59. She indicated that this tension decreased following his termination in 2022. *Id.* at 60. The Individual testified that he has not argued with his family in some time, but that their conversations were frequent and “very intense.” *Id.* at 92. He discusses these matters less frequently, as he found himself “a bit triggered in these arguments[.]” *Id.* at 92–93.

¹⁰ The Individual’s mother testified that both she and her husband told the Individual not to discuss religion at work, as they knew of his “history of evangelizing when . . . there was an opportunity.” Tr. at 64–65. The Individual indicated that his parents were also concerned for his safety. *Id.* at 140–41.

¹¹ The Individual refrained from harming himself on this occasion, because this particular verse was “hyperbolic[.]” and he took his feelings “as a warning.” Ex. 6 at 31; Tr. at 107–08, 122. He denied any similar thoughts of harming

increased anxiety after an incident in 2021, where he spoke to a child he did not know while on a walk in his neighborhood. *Id.* at 38. The Individual often walked around his neighborhood to “spread the word of God.” *Id.* Another neighbor witnessed the interaction between the Individual and the child, recorded it, and posted it on a community website.¹² *Id.* The police were eventually alerted but did not take any action against the Individual. *Id.* The Individual suffered harassment online and in his neighborhood related to this incident, which increased his anxiety.¹³ *Id.*

The record indicates that the Individual engaged in some therapy in the past. Ex. 7 at 38; Ex. 6 at 28. In 2017, he saw a therapist for around three to four months, visiting the therapist for a total of five or six sessions, after his mother expressed some concern about the Individual’s substance use.¹⁴ Ex. 7 at 38; Tr. at 99. In 2022 and 2023, the Individual saw subsequently two different faith-based counselors who he worked with to improve his communication skills and discuss his identity.¹⁵ Ex. 7 at 38; Ex. 6 at 32.

Ultimately, the DOE Psychologist concluded that although the Individual did not meet the criteria for a DSM-5-TR diagnosis, he displayed “a constellation of cognitions, emotions, and behaviors indicative of an impaired mental condition.” Ex. 7 at 40. She specifically noted that he displayed absolutistic distorted thinking and that this thinking has impaired his relationships, employment, and personal well-being. *Id.* The DOE Psychologist also explained that she believes many of the incidents described above were examples of the Individual displaying poor judgment. *Id.* She opined that she believes there is a possibility that the Individual’s belief system “will continue to affect his judgment, reliability (i.e., following the rules), stability (i.e., emotional modulation and control) and/or trustworthiness.” *Id.* She recommended that the Individual engage in cognitive behavioral therapy (CBT) to help him learn to control impulsiveness, be more aware of others, and

himself. *Id.* at 108–09. In later testimony, he indicated that he would take his eye out under specific circumstances. *Id.* at 121–22.

¹² The Individual’s mother testified that the neighbors have not complained about the Individual’s behavior since this incident. *Id.* at 60–61.

¹³ The Individual testified that as he approached the child, he was wondering whether he should knock on the front door to get the attention of an adult therein before speaking to the child. Tr. at 114. The Individual said that his mother told him that following this incident, an online post identified him “as someone that was responsible for some sort of assault or child abuse[.]” *Id.* at 115–16. He stated that although he does not “want to set limitations on” approaching children, he now believes that he can take a “community” approach to speaking to children about faith. *Id.* at 116–17. He later stated that he would not approach a child to discuss such matters. *Id.* at 117.

¹⁴ The Individual’s mother testified that she recommended that the Individual see a therapist, as he was “smoking” and experiencing “issues with concentrating[.]” Tr. at 63. She recommended a therapist that could help him with remaining mindful, as he had difficulty concentrating. *Id.* at 66. The Individual was not interested in exploring religion at the time, so she was primarily concerned with the aforementioned matters. *Id.* at 63.

¹⁵ The first faith-based counselor he saw was in 2020 or 2022, following a breakup. Tr. at 76, 90. He stated that his former girlfriend recommended that he seek therapy and that “[i]t might have” had something to do with his religious proselytizing, as they may have had “some disagreements about certain things[.]” *Id.* at 90–91. He had only two to three sessions with the therapist, as the conversations made him uncomfortable. *Id.* at 100–01. He indicated that after his termination and before he accepted the position with the DOE contractor, he sought and received the services of a faith based counselor “for a few months[.]” attending five or six sessions. *Id.* at 75, 101–02. Once he secured his position with the contractor, he stopped seeing the counselor. *Id.* at 102. He did state that this counselor helped him learn how to navigate the workplace as a person of faith. *Id.* at 103–05.

increase his coping skills. *Id.* She also suggested that the Individual would benefit from meeting with a psychiatrist to evaluate whether medication could treat his anxiety. *Id.*

The Individual testified that his termination “was a big blow for [him,]” and it served as “a reality check in terms of how [he was] approaching doing things.” Tr. at 73. He has been reaching out and “receiving advice from peers, friends, [and] pastoral advice[.]” *Id.* As a result, he has changed his approach to evangelizing, and he now knows that “[there is] a place and [there is] a time[.]” *Id.* at 74. He stated that after he spoke to his friends and family, he realized that the Report contained valuable information, especially when it came to “how [he] go[es] about paying attention to social interactions in the workplace.” *Id.* at 77. Although he was initially resistant to obtaining therapy per the DOE Psychologist’s recommendations, he ultimately decided to look for a therapist in February 2024. *Id.* at 77–78. He heard back from a therapist in April 2024. *Id.* at 78. As he felt that it was important to him, he wanted “to keep a faith-based factor as part of the selection” of a therapist. *Id.* He was able to get an appointment in May 2024, and at the time of the hearing, the Individual had completed one session of therapy.¹⁶ *Id.* at 79. He does intend to continue therapy sessions, and although he was amenable to the recommendation that he seek therapy, he stated that he is “kind of personally opposed to” taking medication. *Id.* at 119, 121. He may consider seeing someone for medication if his therapist suggests it. *Id.*

The Individual’s current therapist, who was present for the testimony of every witness except that of the DOE Psychologist, testified that he has been working as a therapeutic counselor since 2005 and that he has been a pastoral counselor for over thirty years.¹⁷ *Id.* at 125–26; Ex. A. He reviewed the Report, determined that the DOE Psychologist’s assessment was “clinically accurate” and that her analysis was “pretty solid[.]” Tr. at 128. However, he disagrees with the DOE Psychologist’s assertion that the Individual “uses his religion to justify his behaviors.” *Id.* The therapist indicated that based on his experience, the Individual was motivated by his beliefs, but he did not “necessarily” use it to justify his behavior. *Id.* at 128–29. He believes that the Individual’s prior behavior was “transitory and that it was behavior that came from an immature understanding of how to interface . . . one’s sacred belief with the secular world[.]” *Id.* at 129–30. He believes that there is “some room for . . . training or guidance on how to recognize distorted thought patterns and finding out how these particular thought patterns can square better with his work environment and his social interactions.” *Id.* at 132–33. He also wants to help manage the Individual’s anxiety. *Id.* at 133. He wants to see the Individual on a weekly basis for six sessions, then determine if the Individual should be seen on a biweekly basis. *Id.* at 133–34.

The Individual’s supervisor since 2023 testified that she sees and speaks to the Individual “maybe four to five times a month[.]” but has determined that the Individual is “very respectful, very professional[.]” *Id.* at 27–29, 31–32. She also described him as “very honest and very direct[.]” and noted that he is responsible and trustworthy. *Id.* at 29–30. She noted that she has never “personally witnessed, and . . . [has] not heard anyone complain about” the Individual “evangelizing” at work. *Id.* at 30–31. The Individual’s work team lead testified that she interacts

¹⁶ The Individual told his therapist about the clearance process and that he “need[ed] help in gaining some support to better understand how to facilitate conversations in the workplace[.]” Tr. at 106. He does not currently receive any treatment for anxiety. *Id.* at 107.

¹⁷ The therapist testified that he had provided expert testimony in one prior hearing. Tr. at 131–32.

with the Individual on a “daily or weekly” basis, “depending on the project[.]” *Id.* at 37–38, 42–43. She also described the Individual as “very trustworthy in terms of his work ethic[.]” and indicated that he is “totally reliable” and honest. *Id.* at 38–40. With regard to his work-related judgment, she indicated that his judgment is “spot on.” *Id.* at 40. She also indicated that she has not witnessed the Individual “engage in religious advocacy” in the workplace. *Id.*

The Individual’s friend of thirteen years testified that he has “experienced evangelism” with the Individual, and that since his termination in 2022, the Individual “understands that [he is] not the junior holy spirit to be able to save people[.]” *Id.* at 47–49. Now, he can “stop conversations, rather than force them” or “pursue them in a way that would make people uncomfortable.” *Id.* at 49. The Individual can discern “when to speak to individuals and [when] not to.” *Id.* at 50. The Individual has not said anything to his friend that would indicate that he is not willing to continue this behavior in the future. *Id.* at 50–51. Prior to taking a different approach, although the Individual was not aggressive with others, he would “continue to talk to [the person], prompt them” while evangelizing. *Id.* at 51–52. The witness explained that the Individual “could continue the conversation at times where it could become uncomfortable for some individuals.” *Id.* at 52. He surmised that the Individual decided to alter his approach following “his experiences in the workplace and some of the issues that [he has] had with colleagues and his family.” *Id.* at 53–54. The Individual’s mother confirmed in her testimony that he has “definitely not been evangelizing” and that he has “learned . . . from his experience” with his prior employer. *Id.* at 63–64.

The DOE Psychologist testified that her assessment was not made based on the Individual’s religion or religious beliefs, but rather, “what happens as a result of . . . those beliefs.” *Id.* 147. Although she recognized that the Individual has started making changes and has started maturing, her opinion has not changed from what she expressed in the Report. *Id.* at 148–49. The Individual has just started his therapy, and the “distorted thinking . . . really can impair how [one] think[s.]” *Id.* However, she indicated that the Individual does now seem to exhibit “more flexible” thinking. *Id.* at 149. She indicated that she would “need to see how [the Individual] responds to therapy” prior to providing a prognosis, but based on the testimony, “there seems to be [an] acknowledgment that . . . there could be potential concerns still[.]” *Id.* at 150–51. She also indicated that she would need information regarding how the Individual is responding to therapy to know whether the CBT modality would satisfy her recommendations. *Id.* at 152. She stated that she was concerned that the Individual’s “strong emotions” would occasionally “overrule[] his reasoning when [he was] making decisions.” *Id.* at 178. The DOE Psychologist confirmed that the Individual’s “constellation of cognitions, emotions, and behaviors” are readily treatable through CBT. *Id.* at 176–77. When asked about the approximate number of CBT sessions each individual should undergo, the DOE Psychologist said that as different providers employ different methods and patients respond differently, long-term CBT requires approximately twelve to twenty-four sessions. *Id.* at 178.

V. Analysis

A. Guideline E

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline E include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) The information was unsubstantiated or from a source of questionable reliability; and
- (g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

As the record indicates, the DOE Psychologist's conclusion that the Individual exhibits "a constellation of cognitions, emotions, and behaviors suggestive of a mental condition that has impaired his judgement, reliability, emotional stability, and trustworthiness" is based on, among other things, the same behavior that gave rise to the Guideline E concern. Ex. 7; Ex. 1. Under the Guideline E concern, an individual's disruptive or inappropriate behavior may raise concerns if it "is not explicitly covered under any other guideline[.]" Adjudicative Guidelines at ¶ 16(d). Based on a plain reading of the particular Guideline E concern, the LSO may not assert the facts that are explicitly covered under a different guideline, in this case, Guideline I. Thus, I will address the security concerns presented by the Individual's behavior under Guideline I and not Guideline E.

B. Guideline I

The Adjudicative Guidelines provide that 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 I respect and understand the fact that the Individual's current therapist has decades of experience as a therapist, I cannot ignore the fact that at the time of the hearing, he had only seen the Individual once and was informed by the testimony presented at the hearing. Notably, he also did not hear the DOE Psychologist's testimony at the hearing. Given the security concerns raised by the individual's behavior, this was not a well-established therapeutic plan or relationship designed to address the specific concerns raised in this case. While I understand that the DOE Psychologist also had only one session with the Individual, she reviewed the information contained in the Individual's personnel security file, conducted a psychological test, and issued the Report. Because the record is bereft of any report authored and issued by the Individual's therapist, I do not have sufficient information to determine what the Individual's therapist's opinion was based on. I have no information or evidence as to whether he conducted any testing, and I do not have the benefit of a written report explaining the testing results, his observations, and his analysis. Additionally, the Individual's therapist agreed with the DOE Psychologist's assessment, which clearly indicated that the Individual has a condition for which he needs to receive treatment, specifically CBT. I am somewhat concerned that the Individual's therapist could conclude that the Individual's behavior was "transitory" after just one session, although he also agreed with the DOE Psychologist that the Individual is in need of CBT, which could possibly take more than twelve sessions to be effective. Accordingly, I cannot conclude that his opinion outweighs that of the DOE Psychologist that the Individual continues to experience distorted thinking that can impair his judgment, stability, reliability, and trustworthiness. Therefore, I cannot conclude that the Individual has mitigated the stated concerns pursuant to mitigating factors (b) or (c). Further, as the Individual has had only one session of therapy, I do not have any evidence of any ongoing or

consistent compliance with a treatment plan or even how the individual is responding to the limited therapy provided. The requirements of mitigating factor (a) have therefore not been satisfied.

There is nothing in the record, including a professional opinion, indicating that the condition was temporary. Thus, mitigating factor (d) is not applicable. Further, the DOE Psychologist opined that the Individual continued to demonstrate an impaired mental condition and therefore I cannot conclude that there is no indication of a current problem. Mitigating factor (e) is not applicable.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline I of the Adjudicative Guidelines. After considering all the evidence, both 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 concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals