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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: July 29, 2024	)	Case No.:	PSH-24-0162
	)		
	)		

Issued: October 9, 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 restored.

I. Background

The Individual is employed with a DOE Contractor in a position that requires him to hold an access authorization. In 2002, the Individual sought inpatient care following a mental health crisis, resulting in an Anxiety Disorder diagnosis. Exhibit (Ex.) Ex. 5 at 1; Ex. 6 at 1–3; Ex. 7 at 1. In 2003, the Individual was diagnosed with Bipolar II Disorder. Ex. B at 1. In July 2017, the Individual went on disability due to an ongoing struggle with anxiety and depression, and he was diagnosed with Major Depressive Disorder the same year. *Id.* at 1–2; Ex. N at 8–10. In March 2020, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) to maintain his access authorization. Ex. 21. In the March 2020 QNSP, the Individual indicated that he had been previously hospitalized for a mental health condition, and when asked whether he had ever "been diagnosed by a physician or other health professional . . . with . . . bipolar mood disorder," he marked "[n]o." *Id.* at 2–3. In February 2023, the Individual began inpatient psychiatric treatment, followed by outpatient psychiatric treatment in July 2023. Ex. B at 1–2. The Individual failed to report his 2023 inpatient hospitalization to DOE. *Id.* at 3.

[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.

At the behest of the Local Security Office (LSO), the Individual completed and submitted several Letters of Interrogatory (LOI), answering questions regarding his mental health diagnoses, treatment, and his failure to report his 2023 hospitalization. Ex. 18; Ex. 19; Ex. 20; Ex. 22; Ex. 23. He signed and submitted the LOIs in August 2023, November 2023, and March 2024. *Id.* Also at the behest of the LSO, the Individual saw a DOE-consultant psychologist (DOE Psychologist) for a psychological evaluation, which was conducted in January 2024. Ex. 24. The DOE Psychologist issued a report (the Report) of his findings in February 2024 and determined that the Individual met the criteria for a diagnosis of Major Depressive Disorder, Recurrent, Severe, as set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision* (DSM-5-TR). Ex. 24 at 4. The DOE Psychologist opined that the aforementioned diagnosis, combined with the Individual's vulnerability to suicidality, "can impair" the Individual's "judgment, stability, reliability, and trustworthiness." *Id.*

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 substantial doubt regarding his continued 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 I (Psychological Conditions) and E (Personal Conduct) 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 his wife and colleague. *See* Transcript of Hearing, OHA Case No. PSH-24-0162 (hereinafter cited as "Tr."). The Individual also submitted twenty-three exhibits, marked Exhibits A through W. The DOE Counsel submitted twenty-five exhibits marked as Exhibits 1 through 25 and presented the testimony of the DOE Psychologist.

II. Notification Letter

A. Guideline I

Under Guideline I, "[c]ertain emotional, mental, and personality conditions can impair one's judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. Conditions that could raise a security concern and may be disqualifying include "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[,]" and "[v]oluntary or involuntary hospitalization[.]" *Id.* at ¶ 28(b), (c). Under Guideline I, the LSO alleged that:

1. Because of the Individual's diagnosis of Major Depressive Disorder, Recurrent, Severe, and the fact that the Individual is "acutely vulnerable to suicidality," the DOE Psychologist determined that the Individual suffers from an "emotional, mental, or personality condition . . . that can impair judgment, stability, reliability, or trustworthiness." Ex. 2 at 1.

2. The DOE Psychologist recommended that the Individual "continue his present treatment at the direction of his providers for as long as they feel necessary." *Id*. The DOE Psychologist also "felt [that] after three . . . months, [the Individual's] present treatment would have a continuing beneficial impact on his condition, and he should then be in full remission from his major depression and suicidality." *Id.* at 1–2.

3. The Individual voluntarily sought outpatient psychological hospitalization in July 2023, as he experienced "worsening symptoms of depressions, suicidal ideation, and poor overall functioning[.]" *Id.* at 2. The Individual's provider suggested the Partial Hospitalization Program (PHP), and at discharge, the Individual was diagnosed with Anxiety Disorder, Not Otherwise Specified (NOS) and Bipolar II Disorder. *Id.*

4. The Individual indicated in his August 2023 LOI response that he had been hospitalized in February 2023 for nine days as a result of "a severe episode of depression and anxiety." *Id*. He "was discharged with diagnoses of Bipolar II Disorder and Anxiety Disorder[]" after exhibiting such symptoms as "suicidal thoughts with a plan to use knife[,]" "negative self-talk," and feelings of "worthlessness and hopelessness." *Id*. Although the Individual returned to work in May 2023 following treatment, he "continued to struggle with concentration and completing tasks." *Id.*

5. The Individual's access to the worksite was restricted in July 2017 "due to psychological concerns." *Id.* at 3. The Individual was referred for a psychiatric consultation in August 2017, during which he was diagnosed with Bipolar II Disorder, Major Depressive Disorder, Recurrent, Moderate, and Generalized Anxiety Disorder. *Id*.

6. The Individual's access to the worksite was restricted in October 2002 "due to his enrollment in an outpatient program." *Id*. Earlier the same month, the Individual entered inpatient psychiatric treatment after endorsing "thoughts of hurting himself," resulting in a diagnosis of Anxiety Disorder. *Id.*

The LSO's invocation of Guideline I is justified.

B. 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 concern is the "[d]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness[,]" and "[d]eliberately . . . concealing or omitting information, concerning relevant facts to an employer . . . or other official government representative[.]" *Id.* at ¶ 16(a), (b). Under Guideline E, the LSO alleged that the Individual failed to disclose his Bipolar II Disorder diagnosis in the March 2020 QNSP. Ex. 2 at 4. Further, although the Individual indicated in the August 2023 LOI response that he had received inpatient care for

anxiety and depression in February 2023, he failed to report this information to his LSO at the time he received the inpatient care. *Id.* The LSO's invocation of Guideline E 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 their 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

Medical and Reporting History

Prior to his October 2002 inpatient treatment, the Individual sought emergency assistance due to "sleep deprivation" that resulted in "panic attacks and anxiety." Ex. 7 at 1; Ex. 8 at 2; Ex. 10 at 8; Ex. R at 1; Ex. T at 42. The Individual's condition then worsened over the next few days, as he experienced feelings of hurting himself. Ex. 7 at 1–2; Ex. 8 at 2. He was, accordingly, placed in an inpatient treatment program and discharged three days later. Ex. 7 at 2. The Individual next attended an outpatient treatment program for five days and upon his discharge, he was diagnosed with Anxiety Disorder. Ex. 7 at 2; Ex. 5 at 1; Ex. 6 at 1–3. The Individual was prescribed medication, and his treatment included psychotherapy, with "both individual and group" counseling components, and his prognosis was "good." *Id.* Although the Individual had been placed on a worksite restriction, a late October 2002 letter from the medical director of the outpatient facility indicated that the Individual could return to work, and that "his judgment and reliability [were] not impaired." Ex. 4 at 1–2; Ex. 6 at 3; Ex. N at 14–15; Ex. 10 at 5. The Individual was interviewed by a DOE employee to assess his readiness for return to work, and at that time, the Individual stated his intent to seek treatment at the first sign of symptom recurrence. Ex. 7 at 3.

Regarding his 2002 hospitalization, the Individual indicated in his request for a hearing that he "was not aware that [he] was supposed to" and he was not "instructed to" notify DOE at the time of his hospitalization. Ex. B at 1. He notified his manager, his employer's medical clinic, and Human Resources (HR). *Id.* However, he believes that a colleague reported the matter to DOE, as he was interviewed by a DOE employee prior to his return to work.[2] Ex. B at 1; Tr. at 57–58, 77.

In 2003, the Individual began seeing a new provider who diagnosed him with Bipolar II Disorder, and at some point, the same year, he discontinued psychotherapy.[3] Ex. B at 1; Ex. 8 at 2–3.

The Individual's felt that his medication "seemed to stop working" in early July 2017, and he was placed on a worksite restriction due to "psychological concerns." Ex. 9 at 1; Ex. B at 1. The Individual "went on disability because [he] was really struggling with depression and anxiety." Ex. B at 1–2. He indicated in a sworn declaration submitted in July 2024 that he "notified [his manager] shortly after going out[,]" and that he also notified HR, as well as his employer's medical clinic. *Id.* at 2. In July 2017, he was referred to a provider for "cognitive/behavioral treatment to address his depression." Ex. P at 1. This provider's notes indicate that the Individual had been previously diagnosed with Bipolar II Disorder and that he was on medication to manage symptoms. *Id.* The provider's notes also indicate that he was "confused" by this diagnosis, as it did not appear to him that the Individual met the diagnostic criteria. *Id.* at 2. The Individual was returned to work in August 2017, and the accompanying return to work paperwork indicated the Individual was compliant with his medication and that he saw his therapist and primary care physician. Ex. 11 at 1; Ex. B at 2; Ex. N at 10–13. The Individual was diagnosed with Major Depressive Disorder in 2017 by two separate providers. Ex. B at 1–2; Ex. N at 8–10.

Starting in February 2018, the Individual went out on leave to attend transcranial magnetic stimulation (TMS) sessions, a mental health treatment used to "stimulate the brain," every weekday. Ex. B at 1–2; Ex. D at 3; Ex. J; Ex. O at 1–7. At that point, he alerted his manager, HR, and his employer's medical clinic.[4] Ex. B at 2. The Individual asserted that he "was not aware that [he] was supposed to" and he was not "instructed to" report the matter to DOE. *Id.* The Individual was returned to work in May 2018 and eventually discontinued the TMS treatment in 2022, as it was no longer effective. *Id.* As a result, the Individual began a new medication in June 2022, which "worked quite well[,]" allowing him to "come off most of [his] other medications." *Id.*

In February 2023, the Individual presented to the hospital due to worsening of symptoms and suicidal ideation with a plan to use a knife to harm himself. Ex. 12 at 1; Ex. B at 2–3; Ex. L at 1; Ex. 14 at 2, 6; Ex. T at 9, 45. He received inpatient treatment for approximately nine days. Ex. D at 3; Ex. L at 1; Ex. 19 at 1. Medical notes indicate that at the time of his February 2023 hospitalization, the Individual attended therapy "several times per week[,]" focusing on things like "coping skill[s.]" Ex. 12 at 1. The Individual told providers that he had been "stable for about

[2] At the hearing, the Individual did "not recall asking" the DOE employee about proper reporting protocol. Tr. at 89–90.

[3] The Bipolar II Disorder diagnosis was restated in treatment notes from 2015. Ex. 8 at 4, 18.

[4] The Individual indicated in his request for a hearing that he believes that reporting the matter to HR met the reporting requirement imposed upon those who hold an access authorization. Ex. B at 2.

[twenty] years[,]" and that his symptoms were unexpected and "completely impaired his functioning at work." *Id.* The Individual was diagnosed with Bipolar II Disorder and Anxiety Disorder. *Id.* at 4. In 2023, the Individual began seeing a psychologist "for weekly psychotherapy sessions." Ex. B at 3; Ex. L at 1. The Individual's wife notified the Individual's manager of the February 2023 hospitalization, the Individual's site access was restricted the same month, and he remained on leave from February 2023 to May 2023. Ex. 13 at 1; Ex. 14 at 1; Ex. B at 3; Ex. N at 4–6. In his March 2024 LOI response, the Individual indicated that he "was not aware that [he] was required to notify" DOE of the hospitalization. Ex. 23 at 1. The Individual was returned to work in May 2023. Ex. 19 at 1.

Treatment notes from late July 2023 reflect that the Individual continued to "struggl[e] despite going to therapy[,]" and remaining compliant with his medications. Ex. 14 at 1; Ex. 19 at 1. He experienced "passive suicidal ideation[.]" Ex. 14 at 1. The Individual was placed on a site access restriction in late July 2023. Ex. 17 at 1. As the Individual continued to struggle, he decided to enter a PHP, which he attended from August 2023 through September 2023.[5] Ex. B at 3; Ex. M at 1; Ex. 20 at 1; Ex. 14 at 7, 10. On this occasion, he notified his manager and his employer's medical clinic about his treatment.[6] Ex. B at 3. The medical clinic notified DOE, and he was placed on a site restriction and escorted off the worksite. *Id*. The treatment he received at the PHP consisted of medication management and group therapy. Ex. B at 3. Discharge notes again list the Individual's diagnoses as Bipolar II Disorder and Anxiety Disorder. Ex. 14 at 39. Although he was discharged, he continued to experience symptoms of anxiety. Ex. B at 3. The Individual was able to return to work in December 2023. Ex. B at 4; Ex. N at 1–3; Ex. 17 at 1–2.

As noted previously, the Individual met with the DOE Psychologist for a psychological evaluation in January 2024. Ex. 24. During the evaluation, the Individual reported "feeling sad and unhappy and being dissatisfied with his current life circumstances." *Id.* at 3. Regarding his current treatment, the Individual stated that he was taking five prescription medications and reported his engagement in psychotherapy and Electro-Convulsive Therapy (ECT).[7] *Id.* at 2–3. In the Report, the DOE Psychologist opined that, during the evaluation, the Individual "presented with a dysphoric mood[,] but did not display any overt anxiety symptoms[,] which suggests that his current treatment is adequately helping him manage his anxiety symptoms." *Id.* at 3–4. The DOE Psychologist further stated that the Individual "display[ed] a variety of chronic symptoms (e.g., fatigue, inefficiency, inability to concentrate)[,] [and] . . . manifest[ed] two important symptoms of major depression—anhedonia and dysphoria." *Id.* at 4. Based on these symptoms, the DOE Psychologist diagnosed the Individual with Major Depressive Disorder, Recurrent, Severe,

[5] The Individual denied having suicidal thoughts during the time he was in the PHP. Ex. 14 at 18, 25, 34.

[6] In a May 2024 email exchange with a manager, the Individual notified a manager that he "was not aware that [he] was responsible for making the notifications to [DOE]" and that on previous occasions, "notification to the government had been done by [contractor] personnel[.]" Ex. U at 2. The manager indicated that "[r]eporting requirements are the requirement of the individual security clearance holder[,]" and that it is not the employer's "practice . . . to provide supporting or damming [sic] information regarding [its] employees[.]" *Id.* at 1. In another May 2024 email exchange, another contractor employee notified the Individual that he was not reporting "to the government" when he notified her of his hospitalization. *Id.* at 3.

[7] The Individual started ECT in October 2023, which ultimately resulted in the remission of his symptoms at that time. Ex. B at 3–4; Ex. 15 at 7. However, there was a resurgence of the symptoms in December 2023, and the Individual discontinued ECT in March 2024. Ex. B at 4; Tr. at 93.

without adequate evidence of rehabilitation or reformation. *Id.* at 5. The DOE Psychologist opined that this diagnosis, combined with the Individual's vulnerability to suicidality, "can impair" the Individual's "judgment, stability, reliability, and trustworthiness." *Id.* To show adequate evidence of rehabilitation or reformation, the DOE Psychologist "recommend[ed] that he continue his present treatment at the direction of his providers for as long as they feel is necessary." *Id.* The DOE Psychologist also opined that the Individual "should be in full remis[s]ion from his major depression and suicidality" if "his present treatment" has "a continuing beneficial impact on his condition" for at least three months. *Id.*

In June 2024, the Individual sought a psychological evaluation conducted by a consultant clinical psychologist (Individual's Expert), after which the Individual's Expert prepared a report. Ex. D. The Individual told his expert that he previously "had difficulty with psychotherapy because he 'ha[s] a really good life, a good family, a good job, no trauma[,]'" and he "[did not] feel like [he] had a problem that counseling would fix." *Id.* at 2. Regarding his current state, the Individual told his expert that he felt "stable and confident about his current period of remission, which began in [March] 2024." *Id.* at 4. He denied any current suicidal ideation and indicated that he is now "understand[ing] the root causes of his symptoms and how to better manage them." *Id.* The Individual's Expert noted that the Individual "denied any of the classic symptoms which would be indicative of . . . a manic episode." *Id.* Further, "a review of [the Individual's] depressive symptoms and episodes revealed that his 'up periods' were not indicative of mania[,] but rather an absence of his vegetative depressive symptoms." *Id.* at 4–5.

The Individual's Expert stated in his report that he does not believe that the Individual "has ever suffered from a manic or hypomanic episode[.]" *Id.* at 6. He diagnosed the Individual with Major Depressive Disorder, Moderate, Recurrent, with Anxious Distress in full remission. *Id.* The Individual's Expert also concluded that the Individual's judgment, reliability, and trustworthiness are intact, and that the Individual is "utilizing mental health services . . . in accordance with the previous recommendations by [the DOE Psychologist]." *Id.* at 6. The Individual did not appear to be "functionally impaired by any psychological issues[,]" and the Individual's Expert noted that the Individual's willingness to seek assistance when he feels symptomatic "illustrates good judgment[.]" *Id.* The Individual's Expert concluded that the Individual "has achieved remission of his most noteworthy concerns." *Id.* The Individual's Expert recommended continued medication compliance and therapy sessions. *Id.*

In a June 2024 letter, the Individual's psychologist, who the Individual has been seeing since 2021, indicated that the Individual has been diagnosed with Major Depressive Disorder, Severe, and that while under his care, the Individual has never experienced manic or hypomanic episodes that are characteristic of Bipolar II Disorder. Ex. E at 1. The provider also stated that he has never observed the Individual experience "delusional thoughts, psychotic thoughts, impulsive thoughts or behaviors, or poor judgment." *Id.* As the Individual has learned which medications work for him through "trial and error," he "appears to be responding now in a consistently positive manner." *Id.* Finally, he indicated that the Individual has been compliant with his psychotherapy routine. *Id.* at 1–2. Another provider, a physician's assistant, who has been seeing the Individual since 2023, indicated in his June 2024 letter that the Individual's conditions do not "make[] him less trustworthy[,]" that the Individual's symptoms have been improving, and that the Individual has been compliant with treatment. Ex. F.

Hearing Testimony

At the hearing, the Individual's friend and work colleague, who has known the Individual for thirty years, testified that he does not believe that the Individual's mental health problems make the Individual any less trustworthy or reliable. Tr. at 17. The Individual's friend testified that he works "adjacent" with the Individual, and he has not witnessed the Individual have an "episode" at work. *Id.* at 22–23. He also confirmed that their workplace has annual refresher trainings regarding certain reporting requirements for employees that hold an access authorization. *Id.*

The Individual's wife, who has been married to the Individual for twenty-five years, testified that the Individual has been an "open book" with his employer regarding his mental health issues. *Id.* at 25–26. Regarding the Individual's February 2023 hospitalization, she testified that just before the Individual was hospitalized, she informed the Individual's supervisor of his hospitalization. *Id.* at 27, 40–41. She noted that this was the same process she followed during the Individual's 2002 hospitalization and indicated that she assumed that the information "got to the agency" after she notified the employer. *Id.* at 27–29, 41. She also testified that no one told her that she had to notify a different entity. *Id.* at 29.

The Individual's wife stated that when the Individual has an "episode," he typically internalizes his feelings of depression and anxiety, struggles to get out bed, and takes longer to complete tasks. *Id.* at 33–34. She indicated that these symptoms do not "happen overnight," and noted that when the Individual tells her that "[he is] just not feeling like himself anymore[,]" they will reach out to a doctor. *Id.* at 35–36, 39. She further stated that the Individual has learned some therapeutic tools, such as meditation, deep breathing, and the importance of keeping to a routine, to better handle his feelings of depression and anxiety. *Id.* at 37–38. She testified that these tools have been "helpful," but noted that mental health treatment is constantly evolving and that doctors regularly suggest new modalities of treatment. *Id.* at 39.

In his testimony, the Individual stated that his Major Depressive Disorder and Anxiety Disorder cause him to start and complete tasks more slowly than usual, and he is unable to "perform" at his "normal levels." *Id*. at 47–48, 80. With regard to oncoming or worsening symptoms, the Individual is able to identify them by "recognizing and working with [his] thoughts as they come into [his] head." *Id.* at 53. The symptoms that cause him to seek hospitalization include his "mood becom[ing] so degraded that [he] ha[s] . . . difficulty . . . doing normal daily tasks of living and being able to concentrate or do work[.]" *Id.* at 80–82. While the treatments he has undergone are effective, some more than others, they are effective for "varying amounts of time." *Id.* at 49–50. More recently, since the 2023 PHP and ECT, the Individual has returned to managing his mental health symptoms with medication and psychotherapy. *Id.* at 51. During his current biweekly psychotherapy sessions, the Individual "generally talk[s] about . . . how [he has] been doing" and the therapist "coache[s him] on things [he] can do to . . . improve." *Id.* at 90. In addition to these tools, the Individual stated that he has also learned to be "more self-aware" and to better recognize his negative thoughts, so he does not "spiral." *Id.* at 53. He has never, at any time, failed to follow medical advice and treatment. *Id.* at 51–52. Not only does he use meditation to manage oncoming symptoms, he also regularly exercises. *Id.* at 54. When asked by the DOE Psychologist when he last experienced a more "problematic" bout of suicidal ideation, such as a situation "where he

recognized that he really needed to get himself to a safe spot" immediately, the Individual testified that he last experienced such symptoms in February 2023.[8] *Id.* at 85.

The Individual confirmed that he did not report his February 2023 hospitalization to DOE but stated that he "was not aware of that responsibility." *Id.* 54–56, 77. He testified that with his prior hospitalizations, he "did the same reporting as in 2023," indicating that he told his manager and other interested parties with his employer, and he was never told to directly inform DOE. *Id.* at 57–58, 77. He stated that he was "confident" that DOE knew of his 2023 hospitalization, as he was asked to complete an LOI regarding the matter. *Id.* at 60. Further, prior to 2023, he had never been told that he was improperly reporting his hospitalizations, and he disclosed information regarding his treatment and diagnoses in his LOI responses. *Id.* at 60–61. Regarding his failure to report his Bipolar II Disorder diagnosis on his 2020 QNSP, the Individual stated that he didn't "know what [he] was thinking" when he marked "no."[9] *Id.* at 62–63. However, the Individual testified that "in the context of the question," he may have thought that it was referring to Bipolar I Disorder, and not Bipolar II Disorder, as there are "very large difference[s]" between the two diagnoses. *Id.* at 62, 79. He denied intentionally withholding information regarding his prior Bipolar II Disorder at the time he completed his 2020 QNSP. *Id.* at 63.

The DOE Psychologist opined that the Individual has complied with the recommendations contained in the Report, and therefore, he concurred with the Individual's Expert's opinion that the Individual's Major Depressive Disorder was in full remission. *Id.* at 103–04. He explained that because the Individual's condition was in full remission, it meant that "there [was] nothing relevant symptomatically at this point in time." *Id.* at 107. He testified that although the possibility of symptom recurrence could not be ruled out, the Individual is "a good reporter" of his condition and just needs to comply "with . . . recommendations and other . . . things like exercise[.]" *Id.* at 104–05. He further opined that because the Individual and his wife are "very observant . . . of his condition and respond[] [to the onset of symptoms] by going to professionals[,]" the Individual is at a "reduce[d] . . . risk" of experiencing severe episodes in the future. *Id.* at 108–09. The DOE Psychologist additionally noted that the Individual's "last episode, if anything, will make him even more vigilant" about his condition. *Id.* at 108. He also indicated that he "s[aw] no risk of" the Individual ever experiencing symptoms "involving impulsivity, and . . . hypomanic things that [DOE] would be concerned about" in the future. *Id.* Accordingly, he described the Individual's prognosis as "good with continuing treatment as recommended." *Id.* at 106. Regarding the previous Bipolar II Disorder diagnosis, the DOE Psychologist testified that he "did not see any evidence of Bipolar II" disorder and surmised that this was "either a misdiagnosis" or it "was not a relevant condition at this point in time."[10] *Id.* at 100, 103.

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[8] Although medical notes indicate that the Individual experienced "passive suicidal ideation" in July 2023, at the hearing, the DOE Psychologist stated that for "anybody with [M]ajor [D]epressive [D]isorder, suicidal thinking is fairly common." Ex. 14 at 1; Tr. at 85. Therefore, the DOE Psychologist indicated that his question regarding the Individual's last instance of such suicidal thoughts related to a more problematic occurrence "past th[e] threshold where [the Individual] was feeling that it was a problem." Tr. at 85.

[9] The Individual indicated in the March 2024 LOI response that the omission "must have been an error on [his] part." Ex. K; Ex. 23.

[10] The DOE Psychologist opined that a Bipolar II Disorder diagnosis is "much more of a concern than major depression, which does not have the same issue of impulsivity and irresponsible acting out." *Id.* at 101.

V. Analysis

A. 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.

Although the Individual's' Major Depressive Disorder diagnosis is a serious condition, the DOE Psychologist testified that the Individual, who is currently on a treatment plan consisting of both medication and therapy, is in "full remission," meaning that he is not experiencing any relevant symptoms of the disorder at this time. Therefore, the record reflects that this disorder is treatable and controllable with medication. Despite much trial and error regarding his treatment, the Individual testified that he has not experienced more severe symptoms of his condition since 2023 and is adhering to an ongoing treatment plan involving both medication and biweekly psychotherapy sessions. The Individual additionally provided letters from his current treating healthcare providers and a report from the Individual's Expert to demonstrate that he is stable on his current medication regimen and that he is compliant with his treatment plan, which the record shows is an established pattern of behavior. Accordingly, I find that the Individual has mitigated the security concern regarding his diagnosis pursuant to mitigating factors (a) and (b). *Id.* at ¶ 29(a)–(b).

Further, the DOE Psychologist testified that, in his view, the Individual's Major Depressive Disorder was in full remission and his prognosis was "good." The DOE Psychologist indicated that the Individual, especially after his most recent hospitalization, is at a reduced risk of exacerbating his condition as he is very observant of his symptoms and consistently seeks help

from medical professionals. Therefore, I find that the Individual has also mitigated the security concern regarding his diagnosis pursuant to mitigating factor (c). *Id.* at ¶ 29(c).

Although the LSO additionally alleges in the SSC that the Individual has a history of outpatient treatments and hospitalizations, as stated above, I have found that the Individual has mitigated the underlying mental health issues that have caused these incidents. Accordingly, I find that the remaining stated Guideline I concerns are also mitigated pursuant to mitigating factors (a)–(c). *Id.* at ¶ 29 (a)–(c).

B. 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 a holder of an access authorization, the Individual is under a continuing obligation to report any hospitalization for mental health reasons to the appropriate DOE Cognizant Personnel Security Office (CPSO) no later than three working days after each occurrence. *See* DOE O 472.2A, Attachment 5. It is undisputed that the Individual did not inform DOE of his February 2023 hospitalization within three working days. Although the Individual argues that his wife informed his direct supervisor of the February 2023 hospitalization at the time, and he was not aware of any other reporting requirement, it is the Individual's responsibility to be aware of such reporting requirements as a holder of an access authorization. The fact that the Individual was not told of his failure to comply with DOE's reporting requirements during his past hospitalizations does not absolve him this responsibility. Furthermore, although the Individual argues that he did not intentionally omit his previous bipolar diagnosis on the 2020 QNSP, he omitted it nonetheless and was unable to articulate any compelling excuse for doing so. Likewise, the Individual failed to notify DOE of this diagnosis until the August 2023 LOI response. Lastly, disclosing the requested information in an LOI response does not meet the reporting requirement set forth in the aforementioned DOE Order. Accordingly, I cannot conclude that the Individual made prompt, good-faith efforts to correct either his QNSP omission or his failure to report his February 2023 hospitalization before being confronted with the facts. *Id.* at ¶ 17(a).

I also cannot conclude that the Individual mitigated these concerns pursuant to factor (c). Although the Individual did inform his direct supervisor of his February 2023 hospitalization, I cannot find that his failure to follow DOE's reporting requirements is minor, as he failed to follow the protocol set forth in the aforementioned DOE Order. *Id.* at ¶ 17(c). Similarly, I cannot conclude that the Individual's omission of his bipolar diagnosis on the 2020 QNSP is minor. Although the DOE Psychologist and the Individual's Expert agree that the Individual is not currently suffering from a bipolar disorder, the Individual had nonetheless been diagnosed with Bipolar II Disorder at the time he submitted the 2020 QNSP. And as the DOE Psychologist explained, a bipolar diagnosis is of "great concern" to DOE given the likelihood that certain symptoms, such as impulsiveness or mania, could affect an individual's judgment. Therefore, I do not find that the Individual's omission of this diagnosis was minor.

Furthermore, I do not find that "so much time has passed" as the QNSP omission occurred only four years ago in 2020, and the failure to report his hospitalization occurred in February 2023, less than one year ago. *Id.* Additionally, the QNSP omission, coupled with the Individual's testimony that he failed to properly report prior hospitalizations for mental health-related reasons not only in February 2023, but also in October 2002, demonstrates that his behavior is not infrequent. *Id.* Furthermore, the fact that the QNSP omission and failure to report the February 2023 hospitalization were ongoing until the Individual was asked by DOE to provide this information in August 2023 LOI additionally demonstrates that the behavior underlying these stated concerns was not infrequent. I also cannot conclude that these omissions occurred under such unique circumstances, as the duty to report and to provide complete and accurate statements is an ongoing duty for all individuals with an access authorization. Accordingly, I find that mitigating factor (c) does not resolve the security concerns associated with these omissions. *Id.*

Regarding factor (b), there is nothing in the record to indicate that the Individual failed to report or omitted the information due to advice from counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. *Id.* at ¶ 17(b).

Mitigating factor (b) is not applicable. Regarding factor (d), there is nothing in the record to indicate that the Individual has sought counseling specifically to address his omissions on the 2020 QNSP or his failure to report his 2023 hospitalization. *Id.* at ¶ 17(d). Therefore, mitigating factor (d) is not applicable. The LSO did not allege any association with persons involved in criminal activity or any vulnerability due to the omissions and failure to report, and accordingly, mitigating factors (e) and (g) are not applicable. *Id.* at ¶ 17(e), (g). Mitigating factor (f) is also irrelevant because the LSO's allegations did not rely on unsubstantiated information or a source of questionable reliability. *Id.* at ¶ 17(f).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and 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 brought forth sufficient evidence to resolve the security concerns asserted in the SSC under Guideline I, but has not brought forth sufficient evidence to resolve the concerns set forth in the SSC under Guideline E. Accordingly, the Individual has not demonstrated that restoring 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 restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge