



that he had been diagnosed with Borderline Personality Disorder (BPD). *Id.* at 30. On August 7, 2024, the DOE Psychiatrist issued a report of the psychiatric assessment (Report) in which he endorsed the Individual's diagnosis of BPD under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision (DSM-5-TR)* and opined that this diagnosis constituted a personality condition that could impair the Individual's judgment, stability, reliability, or trustworthiness. *Id.* at 48.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines E and I of the Adjudicative Guidelines. *Id.* at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted fourteen exhibits (Ex. 1–14). The Individual submitted twenty exhibits (Ex. A–T).<sup>3</sup> The Individual testified on his own behalf at the hearing and offered the testimony of a character witness. Transcript of Hearing, OHA Case No. PSH-25-0039 (Tr.) at 3, 10, 41. The LSO offered the testimony of the DOE Psychiatrist. *Id.* at 3, 155.

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

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as one basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5.

Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Adjudicative Guidelines at ¶ 15. The SSC cited the Individual's failure to timely report his hospitalization for mental health reasons as required. Ex. 1 at 5. The LSO's allegation that the Individual deliberately concealed information concerning relevant facts from his employer and security officials justifies its invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b).

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<sup>3</sup> The Individual submitted two additional exhibits which I did not accept into the record. One of the exhibits was a letter from the Individual's wife, submitted after the hearing, which the Individual offered to rebut conclusions drawn by the DOE Psychiatrist in his hearing testimony. I explicitly advised the Individual on the record that I would not accept a rebuttal opinion produced after the hearing into the record. Tr. at 183–84. An unsworn letter, the contents of which the Individual's wife could not be questioned about, and which was prepared after the Individual's wife learned of testimony from the DOE Psychiatrist as to discrepancies between a prior letter from the wife (Ex. M) and the Individual's testimony, is not likely to be reliable. Therefore, as I advised the Individual at the hearing, I will not accept the letter into the record. The second exhibit, a one-page character letter from a coworker of the Individual, was also prepared after the hearing and in any case was submitted after I received the transcript and had closed the record.

The LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the other basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychiatrist's opinion that the Individual's BPD constituted a personality condition that could impair the Individual's judgement, stability, reliability, or trustworthiness. Ex. 1 at 5. The opinion of the DOE Psychiatrist that the Individual has a "condition that may impair [his] judgment, stability, reliability, or trustworthiness" justifies the LSO's invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

### III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### IV. FINDINGS OF FACT

The Individual and his wife married approximately fifteen years ago and have several children. *See* Ex. 11 at 158, 162–63, 166–67 (reflecting biographical information that the Individual provided on a Questionnaire for National Security Positions). From 2018 to 2020, the Individual engaged in a series of extra-marital affairs. Ex. 10 at 111 (containing information provided by the Individual to a mental health provider). In early 2024, the Individual's wife discovered that the Individual had been exchanging text messages of a sexual nature with a woman. Ex. 7 at 36 (reflecting information shared by the Individual with the DOE Psychiatrist during a clinical interview).

Following his wife's discovery of the text messages, the Individual contacted the employee assistance program (EAP) at the DOE site at which he worked for support in managing feelings of depression and suicidal thoughts. *Id.* at 30, 42. The Individual met with an EAP counselor for several sessions beginning in February 2024. Tr. at 50. The Individual disclosed his consultation

with the EAP to the LSO in a February 2024 PSIR. Ex. 6 at 22–23. The Individual’s February 2024 PSIR indicated that he was seeking “counseling for some personal matters” and referenced his desire to make his “ties with [his] wife” and children “stronger.” *Id.* at 23. The February 2024 PSIR also stated that the services he was receiving from the EAP were “not related to any *hospitalization for mental health reasons.*” *Id.* (emphasis added). At some point in February 2024, the Individual called a suicide hotline due to his desire to commit suicide. Tr. at 44.

On or about March 1, 2024, the Individual disclosed his extra-marital affairs to his wife. Ex. 7 at 36; Ex. 9 at 88. On March 4, 2024, the Individual presented at the emergency room of a hospital due to suicidal ideation. Ex. 9 at 68 (medical documentation prepared by the hospital). Approximately one or two hours prior to his admission to the hospital, the Individual notified his supervisor that “he would be receiving intensive medical treatment for 72 hours.” Ex. A at 2 (submission from the Individual’s supervisor); *see also* Tr. at 119 (testifying at the hearing that he told his supervisor that the hospitalization was related to thoughts of self-harm).

The Individual told medical personnel at the hospital that he had consumed alcohol and three Tylenol tablets on March 1, 2024, with the intent to kill himself. Ex. 9 at 88; *see also id.* (indicating that earlier that day he had attempted to harm himself by cutting his wrist with a piece of glass); Tr. at 42–43 (testifying at the hearing as to his unsuccessful attempt to slit his wrist with the piece of glass). The Individual indicated that he had experienced suicidal ideation “since his days in college as a young adult” and identified numerous sources of sadness and frustration, including behaviors by his wife, children, and parents, as well as self-hatred and a lack of recognition at work. *Id.* He indicated that these stressors caused him to feel “emptiness, worthlessness, sadness, and anger.” *Id.* The Individual described himself as being “angry all the time” resulting in him getting into physical fights when playing sports recreationally. *Id.*

Discharge documentation indicates that clinicians at the hospital diagnosed the Individual with suicidal ideation, Major Depressive Disorder (MDD), Severe, and BPD. *Id.* at 98–99. The clinicians prescribed the Individual medication for his depressive symptoms and recommended that he participate in dialectical behavioral therapy (DBT). *Id.* at 99.

On March 20, 2024, the Individual began meeting with a psychiatric nurse practitioner for medication management. Ex. E; Tr. at 52–53. The Individual met with the psychiatric nurse practitioner on a monthly basis through July 2024, after which the frequency of their meetings reduced to approximately once every two months. Ex. E; Ex. F; Tr. at 53.

The Individual also met with a psychotherapist who he began seeing in late February 2024. Ex. 7 at 43; Tr. at 59. The psychotherapist was employed at a practice through which the Individual’s wife also received mental health services. Ex. 7 at 43. Based on information provided by the Individual during one of his therapy sessions, the practice contacted his wife to inquire about her wellbeing. *Id.* The Individual was discharged from treatment on May 3, 2024, after he sent an e-mail to the practice to express his displeasure over the practice’s having contacted his wife, without speaking to him first. Ex. 13 at 409–10, 424–26; Tr. at 60–61 (testifying at the hearing that he took “exception” to the practice contacting his wife in what he characterized as an “accusatory” and “very confrontational” manner). Treatment notes from the psychotherapist indicated that she recommended that the Individual receive “more intensive therapy” through another practice. Ex.

13 at 424; *see also id.* (reflecting that the Individual described himself to the psychotherapist as “a salesman [who] tells people what they want to hear”);<sup>4</sup> Tr. at 60 (testifying that the psychotherapist lacked certification in DBT, the recommended therapy for BPD).

For a period of several months following the Individual’s release from the hospital, the Individual’s supervisor had concerns as to the Individual’s reliability due to the Individual being difficult to reach or non-responsive to e-mails at times and indicating that he was unable to travel. Ex. A at 1. According to the Individual, this unreliable behavior was due to he and his wife engaging in “critical conversations” which caused him to neglect work. Tr. at 121.

On April 20, 2024, the Individual’s wife discovered an e-mail account through which the Individual had engaged in communications of a sexual nature with several women for several years, up to and including April 2024. Ex. 7 at 36. After making this discovery, the Individual’s wife sent him text messages in which she threatened suicide and “blocked” him from contacting her by cell phone. *Id.* at 34. This in turn led the Individual to consider suicide, though he did not take any overt actions to enact the plan he contemplated. *Id.*

The Individual submitted the PSIR in which he disclosed his hospitalization for mental health reasons on May 4, 2024. Ex. 5 at 19. The Individual testified at the hearing that he was unaware of the deadline for reporting incidents such as hospitalizations for mental health reasons and that he did not prioritize submitting the PSIR because he was on leave for several weeks following his hospitalization and he had “a lot of work to cover” upon his return. Tr. at 123–27. In the PSIR, the Individual disclosed that his hospitalization was for “suicidal ideations” and indicated that he had been diagnosed with “severe depression, anxiety, and ADHD.” Ex. 5 at 20. The Individual also disclosed the medication he had been prescribed and represented that he was participating in DBT once per week. *Id.* The PSIR did not disclose the Individual’s BPD diagnosis. *Id.* In May 2024, the Individual’s supervisor began observing “gradual improvement in the [Individual’s] reliability . . . .” Ex. A at 1.

On June 17, 2024, the Individual began meeting with a licensed professional counselor (LPC).<sup>5</sup> Ex. 10 at 104; Ex. I at 1; Ex. K. In their initial session, the LPC administered several psychological tests and conducted a clinical interview of the Individual the results of which led her to diagnose the Individual with BPD. Ex. I at 1. The LPC developed a treatment plan for the Individual which called for six months of weekly therapy focusing on DBT, cognitive behavioral therapy, and acceptance and commitment therapy with the goal of, among other things, helping the Individual develop self-acceptance, address feelings of abandonment and identity issues, recognize cognitive distortions, avoid “self-sabotage,” and enhance distress tolerance, emotional regulation, and interpersonal effectiveness. Ex. 10 at 112–13. The Individual has met with the LPC on a nearly

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<sup>4</sup> The Individual testified at the hearing that he believed that the passage in the treatment notes stating that “Client reports they are a salesman” reflected his accusation that the therapists at the practice were salespeople. Tr. at 73–74. Read in context, particularly the treatment notes’ repeated use of the word “they” to refer to the Individual and the use of the word “salesman,” which corresponds to the gender of the Individual but not the therapist, I find this unlikely to be true.

<sup>5</sup> The Individual met with another therapist for several sessions in early June 2024 but discontinued meeting with that provider because she did not specialize in treating BPD and he did not find her to be a “good match.” Tr. at 76–78; Ex. 7 at 43.

weekly basis since June 17, 2024. Ex. K (listing the dates of the Individual's sessions with the LPC); Ex. I at 1 (indicating that any interruptions to weekly meetings were initiated by the LPC).

The Individual met with the DOE Psychiatrist for a clinical interview on July 23, 2024. Ex. 7 at 30. Based on the clinical interview and his review of records he obtained from the LPC, the DOE Psychiatrist determined that the Individual met five *DSM-5-TR* criteria for BPD. *Id.* at 30, 45. The DOE Psychiatrist found that the Individual's behaviors related to his relationship with his wife and the women with who he engaged in extra-marital affairs demonstrated "frantic efforts to avoid real or imagined abandonment" and "a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation." *Id.* at 45. The DOE Psychiatrist found that the Individual's "very frequent[]" episodes of low mood state, anxiety, irritability, and emotional withdrawal demonstrated "intense episodic dysphoria."<sup>6</sup> *Id.* He also found that the Individual endorsed "chronic feelings of emptiness" and that the Individual's self-reported anger, difficulty controlling his temper, and pattern of starting fights when competing in sports showed "inappropriate, intense anger or difficulty controlling anger." *Id.*

The DOE Psychiatrist further opined that the Individual had demonstrated a lack of forthrightness in the clinical interview. *Id.* at 47. The DOE Psychiatrist noted that the Individual claimed that his relationship with his wife had "improved over the past few months' time" and that they had not discussed separation or divorce since April 2024. *Id.* at 40. However, the LPC's treatment notes indicated that the Individual and his wife were "estranged" and in an August 1, 2024, call between the LPC and the DOE Psychiatrist the LPC stated that although the Individual and "his wife continue[d] to reside together, they [were] in fact separated and . . . intend[ed] to structurally modify their residence to allow him to be able to remain in the home (to be close to his children) but to otherwise live apart from each other." *Id.* The DOE Psychiatrist also observed that the Individual had failed to disclose his "suicidal attempt or suicidal gesture" with the piece of glass on March 1, 2024, during the clinical interview. *Id.* at 33, 47.<sup>7</sup>

In the Report, the DOE Psychiatrist opined that the Individual's BPD impaired the Individual's judgment and trustworthiness because it caused his mood to fluctuate frequently, led him to question the "value of being alive," and influenced his provision of accurate information. *Id.* at 48. The DOE Psychiatrist opined that the Individual's therapy and medication were positive interventions, but noted that BPD "is chronic in nature [and] typically takes years to treat to the point of remission or to achieving substantial and consistent minimization of experienced symptomatology (with many not achieving these outcomes, despite compliance with treatment)." *Id.*

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<sup>6</sup> The DOE Psychiatrist disagreed with the hospital's diagnosis of the Individual with MDD based on the frequency of the Individual's mood changes and the absence of evidence that the Individual experienced depressive episodes lasting two weeks or more as is required for a *DSM-5-TR* diagnosis of MDD. Ex. 7 at 46.

<sup>7</sup> Although not directly cited as evidence of a lack of forthrightness, the Report noted several other instances in which the Individual provided incomplete or inaccurate information. For example, the Individual told the DOE Psychiatrist that he had never experienced "instability in friendships . . ." Ex. 7 at 38. However, the Individual told clinicians at the hospital that he had "no friends" and was "a loner." Ex. 9 at 90. He also failed to disclose in the clinical interview that he had once contemplated suicide by jumping off a structure while in college. Ex. 7 at 32.

A character witness, who is in frequent contact with the Individual through a mutual activity in which his and the Individual's children engage, testified positively at the hearing as to the Individual's reliability, trustworthiness, and good judgment. Tr. at 10–11, 23–24. The character witness was aware of the Individual's mental health diagnosis and that the Individual's marriage had been impacted by the Individual's infidelity but was unaware of the Individual's suicide attempts. *Id.* at 15, 20, 38. The Individual also submitted several letters from persons familiar with the Individual who indicated that they perceived the Individual to be a reliable and trustworthy person. Ex. B; Ex. D; Ex. H.

The Individual accepts his BPD diagnosis and intends to comply with treatment recommendations to control the condition. Tr. at 49, 52. The Individual takes his medication as prescribed and meets with the psychiatric nurse practitioner and LPC on a regular basis. *Id.* at 53–54, 80. The Individual's treatment with the LPC has focused on “radical acceptance” of reality and its difficulties, coping with stress and frustration through music, journaling, and exercise, and developing his social skills. *Id.* at 81–82.

In his hearing testimony, the Individual represented that his emotional stability had improved since he began receiving treatment. *Id.* at 55–56. The Individual testified that he had not actively planned potential means of committing suicide since April 2024 and had only passively contemplated suicide since that time. *Id.* at 69; *see also* Ex. T at 13, 19, 21 (indicating that the Individual “endorsed thoughts of suicide and hopelessness” and reported heightened passive suicidal ideation in September 2024 due to the suspension of his security clearance and setbacks in his relationship with his wife).

The Individual and his wife remain married and reside at the same address, although the Individual has space separate from his wife and children in the basement. Tr. at 101, 106; Ex. M. The Individual testified that he perceives that his wife has conveyed “mixed messages” to him concerning the status of their relationship. Tr. at 103. The Individual characterized the relationship as one in which he and his wife are physically intimate and share a marital bed “many nights,” co-parent their children, travel together, and routinely engage in leisure activities together. *Id.* at 103, 105–06. In a letter submitted prior to the hearing the Individual's wife confirmed that she and the Individual co-parent their children and take family trips together. Ex. M. However, she also indicated that they “are no longer living as a married couple” and were separated. *Id.* The LPC's treatment notes from September 2024 indicate that the Individual told her that his wife had said that she regretted physical intimacy in which she and the Individual had engaged and that the subject had led the Individual's wife to contemplate divorce. Ex. T at 13. Subsequent treatment notes from October 2024, November 2024, January 2025, and March 2025 referred to the Individual and his wife as “estranged,” her taking steps to “move on,” and the Individual and his wife developing a friendship rather than being romantic partners. *Id.* at 13, 32, 46, 71, 92.

The Individual testified that he did not intentionally fail to disclose his suicide attempt with broken glass to DOE Psychiatrist and that he believed that he did disclose this event during the psychiatric evaluation. *Id.* at 44, 46. The Individual further testified that he would have had no reason to hide this information as he had voluntarily disclosed the suicidal ideation that led him to call a suicide hotline in February 2024. *Id.* at 45; *see also* Ex. 7 at 33 (showing that the DOE Psychiatrist included the information about the Individual's call to the suicide hotline in the Report). He also

denied that the fights he had engaged in while playing recreational sports were indicative of anger, as the DOE Psychiatrist inferred in the Report, and represented that he had engaged in them defensively. Tr. at 99–100. Regarding his characterization of his relationship with his wife during the clinical interview as strong and his failure to indicate that they were separated, the Individual denied that he had intended to mislead the DOE Psychiatrist and asserted that his “complicated” relationship with his wife had made it difficult to convey the nature of the situation. *Id.* at 104–07.

The DOE Psychiatrist opined at the hearing that the Individual’s BPD remained active and can impair his judgment, reliability, and trustworthiness. *Id.* at 158–59. The DOE Psychiatrist testified that BPD is a chronic condition that does not resolve spontaneously. *Id.* at 159. He indicated that he believed that the Individual’s prognosis for managing his BPD was “fair, possibly fair to good,” but that the Individual’s BPD was not presently under control. *Id.* at 160, 187–88.

The DOE Psychiatrist cited several sources of concern that prevented him from finding that the Individual’s BPD was under control with a good prognosis. The DOE Psychiatrist noted that the Individual’s therapy with the LPC had not significantly focused on the causes of the Individual’s historic untrustworthiness or methods to prevent recurrence of this behavior. *Id.* at 160–61. He further noted that the Individual is highly intelligent and high functioning and accordingly his hearing presentation may not have been indicative of his stability under highly stressful circumstances outside of a professional, time-constrained setting. *Id.* at 163–64. He further observed that the Individual’s relationship with his wife appeared unstable, the Individual’s perception of the relationship may have differed from his wife’s perception, and the Individual was at risk of “mental decompensation” if his wife sought to divorce him or change their relationship status, particularly in light of the Individual’s history of emotional disturbance when his wife exhibited distress in their relationship. *Id.* at 161–62, 169–70. Finally, he indicated that he perceived the Individual’s explanations at the hearing for omissions and false statements in the clinical interview as “dishearten[ing]” and indicative of either ongoing untrustworthiness or lack of accurate perception of reality. *Id.* at 165–66, 169.

## **V. ANALYSIS**

### **A. Guideline I**

Conditions that could mitigate security concerns under Guideline I include:

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



condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;

(e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

The Individual has acknowledged his BPD, the condition is controllable with treatment, and the Individual has consistently participated in treatment with the LPC. However, the DOE Psychiatrist opined at the hearing that the Individual's treatment was not sufficiently focused on addressing his historic untrustworthiness. The DOE Psychiatrist indicated that this shortcoming rendered the Individual's treatment insufficient to fully address his BPD and asserted that the Individual's hearing testimony revealed ongoing issues with trustworthiness or reality testing on the part of the Individual. While the LPC indicated in her treatment notes that the Individual had a good prognosis, I do not have the benefit of her testimony explaining why she adopted a treatment plan which did not more directly address the Individual's untrustworthiness or describing her perception of the Individual's forthcomingness and reality testing.

The DOE Psychiatrist's opinion concerning the Individual's truthfulness does not appear unfounded; I found the Individual's hearing testimony concerning the reason for his late submission of the PSIR, described in detail in the Guideline E analysis below, and his explanations for several of his statements to the DOE Psychiatrist in the clinical interview unconvincing. Moreover, the DOE Psychiatrist's opinion that the Individual remains at risk of deterioration of his condition if his perceived relationship with his wife changes is consistent with the Individual's and his wife's fraught relationship history of conflict and mutual threats of suicide. In the absence of a contrary opinion from the LPC, I cannot discount the serious concerns presented by the DOE Psychiatrist's opinion and the Individual's history.

For the aforementioned reasons, although the Individual has demonstrated ongoing participation in treatment, I cannot conclude that the specific treatment that the Individual is receiving is sufficient to readily control his BPD. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 29(a).

In light of the convincing opinion of the DOE Psychiatrist that the Individual's BPD is not under control, and the absence of a definitive positive prognosis for the Individual's future management of his BPD, I find the second and third mitigating conditions inapplicable. *Id.* at ¶ 29(b)–(c). The fourth and fifth mitigating conditions are likewise inapplicable because BPD is a chronic condition and, as per the opinion of the DOE Psychiatrist, there are indications of a current problem. *Id.* at ¶ 29(d)–(e).

For the aforementioned reasons, I find that none of the mitigating conditions under Guideline I are applicable in this case. Accordingly, the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

## **B. Guideline E**

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.

The Individual's submission of the PSIR more than two months following his hospitalization for mental health reasons was not sufficiently prompt for me to conclude that the first mitigating condition is applicable. Even when he did submit the PSIR, he omitted his diagnosis of BPD. It is apparent from the Individual's February 2024 PSIR that he was aware of the requirement to disclose hospitalizations for mental health reasons. In light of the Individual's delay despite knowing that hospitalizations for mental health reasons were required to be reported, the minimal time and effort needed to comply with the reporting requirement, and the Individual's omission of his BPD diagnosis from the PSIR, I do not find the Individual's explanation at the hearing for the delay reasonable or indicative of good faith.

The Individual did promptly disclose to his supervisor that he was being hospitalized and claimed in his hearing testimony that he disclosed the reason for his treatment. However, the letter submitted by the Individual's supervisor in connection with this proceeding indicates that the

Individual told him that he was receiving “intensive medical treatment” and does not establish when, if ever, the Individual disclosed the full circumstances of his hospitalization to the supervisor. As there is no indication that the Individual promptly disclosed to his supervisor that his hospitalization was for mental health reasons, I cannot conclude that his communications with the supervisor in March 2024 constituted a good faith effort to disclose his treatment. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 17(a).

The second mitigating condition is inapplicable because the Individual did not allege that he delayed submitting the PSIR on the advice of counsel or another representative. *Id.* at ¶ 17(b).

The Individual’s failure to timely submit the PSIR was relatively recent and occurred in connection with the exacerbation of symptoms from a chronic mental health condition rather than unusual circumstances. The failure to submit the PSIR was not minor as it prevented the LSO from adjudicating the Individual’s eligibility for access authorization during a time when his reliability and stability were unquestionably impaired. While the Individual’s behavior was an isolated incident, it is part of a broader pattern of the Individual not being entirely forthcoming about his mental health. In light of the ongoing concerns about the Individual’s ability or willingness to be forthright in describing his mental health issues, I find that the isolated nature of the Individual’s non-compliance with DOE Order 472.2A is not sufficient for me to conclude that he will comply with rules and regulations going forward. Accordingly, I find the third mitigating condition inapplicable. *Id.* at ¶ 17(c).

The Individual has acknowledged his failure to timely report his hospitalization for mental health reasons and has received counseling related to his BPD. However, as discussed above, it is not apparent that the Individual’s counseling has adequately addressed his untruthfulness and the less than favorable prognosis of the DOE Psychiatrist leaves me in doubt that the Individual’s BPD will not affect his trustworthiness in the future. Accordingly, I find the fourth mitigating condition inapplicable. *Id.* at ¶ 17(d).

The fifth mitigating condition is irrelevant to the facts of this case because the LSO did not allege that the Individual engaged in conduct that placed him at special risk of exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is irrelevant because the fact that the Individual failed to timely disclose his hospitalization for mental health reasons is not in dispute. *Id.* at ¶ 17(f). The seventh mitigating condition is also irrelevant because the LSO did not allege that the Individual associated with persons engaged in criminal conduct. *Id.* at ¶ 17(g).

Having concluded that none of the mitigating conditions are applicable to the facts of this case, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

## VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines E and I of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals