

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines H and I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

The Adjudicative Guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration.

Guideline H (Drug Involvement) references illegal drug usage, including the misuse of prescription medication. Guideline H states that "[t]he illegal use of controlled substances . . . can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 24. Pertinent to this case, the condition set forth in the guideline that could raise a disqualifying security concern is any substance misuse, including the misuse of prescription drugs. Adjudicative Guidelines at ¶ 25(a) (citing the definition of substance misuse listed in ¶ 24). The LSO alleges that the Individual admitted that he took a deliberate overdose of a prescribed medication during a November 2018 suicide attempt. Ex. 3 at 3. Given this factual background, the LSO's invocation of security concerns under Guideline H is justified.

Guideline I refers to "[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. There are five conditions set forth in the guideline that could raise a disqualifying security concern; however, the only one that is involved in this case is "behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors." Adjudicative Guidelines at ¶ 28(a). The LSO cited the Individual's hospital discharge instructions which referenced the Individual's suicidal ideation and his recent November 2018 suicide attempt. Ex. 3 at 3. In light of these facts, the LSO's reference to Guideline I security concerns are 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 of the relevant evidence, favorable and unfavorable, as to whether the granting

or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (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. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual testified that, in late November 2018, he discovered his wife being intimate with another man. Tr. at 37. He stated that, when she arrived home, he confronted her, and she asked for a divorce. *Id.* at 58. The Individual claimed that, although he worked the two days following that confrontation, he did not feel he could talk to anyone because "people that I know in our church . . . are family oriented and family is the whole crux of everything. And I felt that I could not really talk to them because, one, I was a convert; and two, I couldn't keep my family together. . . . I . . . felt like a failure." *Id.* at 40. The Individual stated that he was alone on the evening of the second day after confronting his wife, driving out of town, when his car developed mechanical problems. *Id.* He continued that he pulled into a recreational area. *Id.* at 39. The Individual stated that he had tried to talk to his wife the two days after she asked for the divorce, but she would not respond, including not responding while he was in his inoperative vehicle at the recreational area. *Id.* The Individual claimed "[w]hat kind of pushed me over the edge is her ignoring me and not wanting to talk to me." *Id.* at 40. While at the recreation area, the Individual consumed an overdose of prescription medication, attempting to commit suicide. Tr. at 40. He testified that he immediately regretted his decision and drove himself to the hospital. *Id.* at 41. The Individual testified that,

I remember checking myself in and telling the lady at the desk what I had done. And then I recall laying on a stretcher in the ER. There's a bit of time that's kind of lapsed from when I went into the hospital, I admitted myself to the hospital until waking up in one of the rooms in the back.

Id. at 43. He asserted that he stayed overnight at the hospital. *Id.* at 44. The Individual claimed that, upon his release from the hospital, he immediately contacted his Primary Care Physician

(PCP), who obtained for him an appointment at a treatment facility the very next day. He subsequently reported the incident to authorities at his workplace. *Id.* at 44, 55; Ex. 1 at 1-2.

The Individual testified that he currently sees his therapist (Therapist) once a week. Tr. at 47-48. He stated that she gave him cognitive behavior tools that are very helpful and that has transformed into him writing in a journal every night. *Id.* In addition to the Therapist, the Individual asserted that he sees a doctor every two months to review his antidepressant medications, although when he first started on the medication he was seeing the provider once every two weeks. *Id.* at 48. He claimed that he and Therapist have created a safety plan, which they reviewed the day before the hearing. *Id.* at 49. The Individual stated that the plan includes (1) contacting one of the two friends who testified at the hearing; (2) if they are unavailable, contacting the suicide prevention line; and (3) contacting the Therapist. *Id.* He also stated that he removed all his weapons from his home and placed them with a friend. *Id.* Finally, the Individual concluded that he wasn't thinking clearly, but now he has tools that will help him in the future. *Id.* at 51-52.

The Individual's wife testified that she asked for a divorce immediately prior to his suicide attempt. Tr. at 9. She stated that they have been married for 18 years and have three children together. *Id.* at 8, 9. His wife asserted that the Individual found a therapist the day after being released from the hospital. *Id.* at 10. She further testified that he had not attempted suicide prior to the November 2018 attempt. *Id.* at 11. The Individual's wife confirmed that he sees the Therapist once a week and that he follows through with all the treatment recommendations.² *Id.* at 12. She stated that the children are aware of what happened and the two youngest children are attending counseling upon the suggestion of the Individual. *Id.* at 14-15. The wife testified that, "even given this incident, I know he is seeking the help he needs, and I don't fear for the safety of my children," which she also testified is of paramount importance to her. *Id.* at 13. She concluded that the Individual seems calmer and more resigned to the divorce. *Id.* at 15.

Two of the Individual's friends testified that also work at the LSO facility, although not with the Individual. Tr. at 18-28. The first friend testified that he has known the Individual and his family for seven years. *Id.* at 18. He stated that he had no knowledge of any anxiety or depression in the Individual. *Id.* at 22. The first friend also stated that the Individual is "moving on" with his life since his wife asked for a divorce. *Id.* The second friend testified that he has known the Individual for three years. *Id.* He asserted that the Individual has visited his family at their home. *Id.* at 24. He claimed that he has no concerns about the Individual's honesty or trustworthiness. *Id.* at 26. The second friend testified that when he went to the hospital to be with the Individual after the suicide attempt, the Individual was remorseful for attempting suicide. *Id.* at 27.

He told me that he was very distraught with the breakdown of his marriage with the actions of his wife . . . and how things have happened. But he also expressed deeper remorse in what had happened in his actions in trying to take his own life. He told me that as soon as he took those pills he felt that was the absolute wrong decision, and he went to the ER and checked himself in.

Id. at 27. The second friend concluded that the Individual is now on the "correct path" after a difficult situation. *Id.* at 28.

² The Individual and his wife still cohabitate even though they are in the midst of a divorce. Tr. at 14.

The Individual's co-worker, who also shares an office with the Individual, testified that they have worked together for 10 years and shared an office for 5 years. Tr. at 32. He claimed that he is aware the Individual attempted suicide. *Id.* 35. The co-worker stated that the Individual has discussed his problematic marriage with him. *Id.* The co-worker concluded that he has no concerns about the Individual's honesty or trustworthiness or ability to properly control classified information. *Id.*

Finally, the Therapist testified that she met with the Individual for the first time four days after his attempted suicide and that she sees him weekly. Tr. at 60, 66. The Therapist asserted that she developed a treatment plan that the Individual has been following. *Id.* at 62-63. In addition, she claimed that the Individual is compliant in taking his antidepressant medications. *Id.* at 66. The Therapist testified that the Individual has a good prognosis. "I've given him . . . tools, and I think he'll be fine." *Id.* at 64. She concluded that he has a good support system in that his children are important to him and the Individual's sister has a close relationship with the Individual. Further, the Therapist testified that after the Individual's divorce is finalized, his life will be more normalized. *Id.* at 64, 66.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. "Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting security clearances, I must deny restoring the clearance if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

A. Guideline H Security Concerns

The illegal use of controlled substances can raise questions about an individual's reliability and trustworthiness and also about a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶ 24. Guideline H provides that the following relevant conditions may mitigate security concerns:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment (*id.* at ¶ 26(a));

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence; (*id.* at ¶ 26(b)):

Id. at ¶ 26(a)-(b).

The Individual testified that he was despondent about the impending end of his 18 year marriage at the time of his overdose. With the coming finalization of his divorce and the tools that the Therapist has given the Individual to work through any disappointments in his life, I find that the turmoil in the Individual's life produced by his marriage or other future problems is not likely to recur. Further, the Individual now has someone to talk to about any instability that may occur in the future. Consequently, I find that the Individual has satisfied mitigation factor (a) listed above. I also find the Individual's immediate response to his misuse of prescription medication most persuasive in this case. Immediately after ingesting the medication, the Individual realized he made a mistake and went to the hospital. When he was discharged from the hospital, the Individual consulted with his PCP and was referred to a treatment facility. Within four days of his overdose, the Individual was in counseling and was beginning to use the tools that the Therapist had provided. The Individual's wife and the Therapist both testified that he is compliant with his Therapist's recommendations and treatment plan. Further, the Individual has established a six month pattern of abstinence from any prescription drug misuse. The Individual's acknowledgment of his substance misuse, his current six month period of abstinence, and subsequent enrollment in therapy satisfies mitigation factor (b) above. Given my determinations regarding the Individual's past misuse of his prescription medication and the steps he has taken to avoid a repeat of his one-time misuse, I find that the Individual has resolved the DOE's Guideline H security concerns.

B. Guideline I Security Concerns

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. Guideline I provides that the following relevant conditions may mitigate security concerns:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan (*id.* at 29(a));

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional (*id.* at 29(b));

(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 (*id.* at 29(c));

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability (*id.* at 29(d));

Id. at ¶ 29(a)-(d).

The Individual sought treatment immediately after his suicide attempt, as confirmed at the hearing by his Therapist, his wife, and himself. Further, he has demonstrated that, since his suicide attempt, he has been compliant with all the treatment recommendations of the Therapist, who has given him a favorable prognosis, and his medication provider as required by the mitigating factors listed in (a) and (b) above. The Individual's wife and the Therapist confirmed that he is involved and compliant with his counseling, again substantiating that he is meeting the requirements in mitigating factors (a) and (b) above. The Therapist opined that his prognosis is good and that once his divorce is finalized, he may be able to conclude counseling with her, thereby satisfying requirements listed in mitigating factors (b) and (c) above. The Individual, his wife, and his two friends testified that the suicide attempt resulted from his wife asking for a divorce. The Individual and his witnesses also testified that since he started counseling, he is calmer and resigned to the divorce occurring. I believe that the incident leading to the Individual's November 2018 suicide attempt was a unique, temporary event in the Individual's life. With the impending divorce from his spouse, I find that the situation that led to the Individual's suicide attempt has been resolved. Additionally, the Individual's reaction to any further instability in his life will be reduced by the tools the Therapist has given him and the safety plan created with his Therapist. Therefore, I find that a similar extreme emotional response is not likely to arise in the future thus satisfying mitigating factor (d) above. Therefore, I conclude that all of the Guideline I mitigating factors referenced above are applicable to this case and that the Individual has resolved the DOE's Guideline I security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines H and I of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals