

three to four days prior to the July 3, 2019, clinical interview. *Id.* However, laboratory testing ordered by the DOE Psychologist provided strong evidence that the Individual consumed alcohol on a regular, heavy basis for several weeks prior to the clinical evaluation. *Id.* at 6. The Individual also disclosed to the DOE Psychologist that he had incurred significant financial debts and that law enforcement had been summoned on two occasions as a result of his sending text messages with suicidal content. *Id.* at 4–5.

The DOE Psychologist subsequently issued a psychological assessment (Report) in which she opined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 7. She also opined that the Individual’s “pattern of self-inflicted financial distress[,] . . . dishonesty, poor decision-making, history of depressive symptoms, and failure to follow professional recommendations for treatment comprises a mental condition which can impair [his] judgment, stability, reliability and trustworthiness.” *Id.* at 8. On April 27, 2020, in response to a second LOI from the LSO (2020 LOI) the Individual indicated that he continued to consume alcohol and was not pursuing treatment. Ex. 7 at 1.

On September 18, 2020, the LSO issued the Individual a letter indicating that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. Ex. 1. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted thirteen numbered exhibits (Ex. 1–12) into the record.² The Individual submitted nine lettered exhibits (Ex. A–I) into the record. The LSO presented the testimony of a DOE-contracted psychologist (DOE Psychologist B) and the Individual presented his own testimony.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first basis for suspending the Individual’s security clearance. Ex. 2 at 1. “Conduct involving questionable judgement, lack of candor, 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 Summary of Security Concerns asserted that the Individual provided false or misleading information concerning his alcohol consumption to the OPM investigator and in response to the 2019 LOI. Ex. 2 at 1. The LSO’s allegation that the Individual provided false or misleading information to an investigator and security officials involved in making a

² The LSO submitted two alcohol tests as exhibits 9a and 9b, and therefore the LSO’s exhibit numbers do not match the total number of exhibits submitted.

recommendation relevant to a national security eligibility determination justifies the LSO's invocation of Guideline E. Adjudicative Guidelines at ¶ 16(b).

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as another basis for suspending the Individual's security clearance. Ex. 2 at 1–2. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Summary of Security Concerns listed as relevant facts: the DOE Psychologist determined that the Individual met the diagnostic criteria for AUD, Moderate, under the *DSM-5*; the Individual consumed alcohol after meeting with the DOE Psychologist and did not pursue treatment; the Individual was involved in multiple domestic disturbances with Ex-Wife A after consuming alcohol; and the Individual sent text messages containing suicidal content after consuming alcohol. Ex. 2 at 2. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work, was diagnosed with AUD, Moderate, by a duly qualified medical or mental health professional, failed to follow treatment advice once diagnosed, and consumed alcohol against treatment recommendations after a diagnosis of AUD justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d)–(f).

The LSO cited Guideline I (Psychological Conditions) as the third basis for suspending the Individual's security clearance. Ex. 2 at 3. Certain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern under Guideline I. *Id.* The Summary of Security Concerns cited the DOE Psychologist's opinion that the Individual's "constellation of dishonesty, poor decision-making, history of depressive symptoms, and failure to follow professional recommendations for treatment comprises a mental condition which can impair [his] judgment, stability, reliability and trustworthiness." Ex. 2 at 3. The opinion of a duly qualified mental health professional that the Individual has a condition that may impair 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 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.

IV. FINDINGS OF FACT

On June 12, 2018, the Individual met with the OPM investigator for an interview. Ex. 4 at 1. The Individual admitted that law enforcement had been summoned to his home on three occasions from June 2016 to late 2017, and that he had consumed alcohol prior to each of these visits. *Id.* at 5. The Individual reported that the first visit occurred after Ex-Wife A began “beating” him during an argument. *Id.* The Individual reported that Ex-Wife A had consumed alcohol to excess but that he had consumed only one alcoholic drink. *Id.* According to the Individual, the other two visits occurred after friends of the Individual requested that police conduct a welfare check of the individual after reading the Individual’s social media posts and text messages. *Id.* The Individual attributed the posts and messages to becoming “overly emotional about recently losing a best friend and [] realizing that his marriage was over” after consuming alcohol alone. *Id.* The Individual disclosed that he spent the night at a crisis center following the first incident. *Id.* The Individual told the OPM investigator that he stopped consuming alcohol after the second welfare check in approximately September 2017. *Id.* at 5–6.

On January 17, 2019, the LSO issued the 2019 LOI to the Individual inquiring about the Individual’s drinking habits and recent encounters with law enforcement. Ex. 5 at 2. In his response, the Individual stated that he “no longer drink[s] alcohol” and that he “stopped in 2017.” Ex. 6 at 5. The Individual provided a case report prepared by law enforcement after Ex-Wife A called them to the family home in July 2016 in connection with a domestic dispute. *Id.* at 9. According to the report, Ex-Wife A began striking the Individual after discovering the Individual sending text messages to his previous ex-wife (Ex-Wife B). *Id.* at 13. According to the report, both parties had been drinking, and Ex-Wife A was the aggressor. *Id.* at 11, 13.

The Individual provided the LSO with two additional police reports concerning welfare checks of the Individual. The first report, dated October 8, 2017, indicated that Ex-Wife B requested a welfare check of the Individual after he texted her that he was “struggling and has nothing to live for” and to “tell the kids he loves them.” *Id.* at 8. In his response to the 2019 LOI, the Individual said that he had consumed “a few drinks” and was feeling depressed about the death of a friend when he texted Ex-Wife B, but that he was “messaging around” and should not have sent the messages. *Id.* at 4. The second police report, dated October 12, 2017, originated after a friend of the Individual contacted law enforcement to tell them that the Individual had texted her about his problems and had said that they were “nothing a loaded handgun couldn’t fix” and that he “just needed to work up the courage to end it.” *Id.* at 18. When law enforcement officers asked the Individual about whether he had sent the text messages he reported that he was too intoxicated to remember. *Id.* The officers later transported the Individual to a crisis center for the night. *Id.*

The LSO subsequently referred the Individual to the DOE Psychologist for an evaluation. Ex. 8 at 2. The DOE Psychologist met with the Individual for a clinical interview on July 3, 2019. *Id.* The

Individual told the DOE Psychologist that he consumed approximately three drinks once every two weeks from 2015 to 2017. *Id.* at 3. The Individual represented that his consumption of alcohol decreased to no more than two drinks on rare occasions following his divorce from Ex-Wife A in December 2017. *Id.* The Individual indicated that he last consumed alcohol three or four days prior to the clinical interview, when he consumed half of a cocktail. *Id.*

The DOE Psychologist requested that the Individual undergo two laboratory tests to validate his claimed levels of alcohol consumption: an Ethyl Glucuronide (EtG) urine test and a phosphatidylethanol (PEth) blood test. *Id.* at 6. Both tests were positive at levels suggesting that the Individual had recently consumed large quantities of alcohol. *Id.* The physician who interpreted the test results indicated that the Individual's EtG test was positive at 68,830 ng/mL, and that this result was strong evidence that the Individual engaged in "recent heavy alcohol consumption or light drinking on the day of the testing." Ex. 9. The physician indicated that the Individual's PEth test was positive at a level of 702 ng/mL, which was consistent with regular heavy consumption of alcohol. *Id.* The physician noted that, in one study of alcohol-dependent individuals entering treatment, "a PEth of 499 ng/mL was congruent with six drinks a day" *Id.*

On July 26, 2019, the DOE Psychologist issued her Report in which she concluded that the Individual met the diagnostic criteria for AUD, Moderate, under the *DSM-5*. Ex. 8 at 8–9. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for twelve months, participating in an intensive outpatient program (IOP) for a minimum of four weeks followed by aftercare meetings, participating in Alcoholics Anonymous (AA) or a comparable program, and undergoing alcohol testing during his period of abstinence from alcohol. *Id.* The DOE Psychologist also noted the Individual's lack of candor and significant financial debts, and observed that a "constellation of dishonesty, poor decision-making, history of depressive symptoms, and failure to follow professional recommendations for treatment comprises a mental condition which can impair [the Individual's] judgment, stability, reliability and trustworthiness." *Id.* at 9. The DOE Psychologist recommended that the Individual "initiate a medication consultation with a psychiatrist and participate in mental health counseling to specifically evaluate and treat his apparent mood problems (e.g. depression; suicide risk)." *Id.*

On February 26, 2020, the LSO issued the 2020 LOI to the Individual in order to update its information on the Individual's alcohol consumption and treatment. Ex. 7 at 2. In his response, dated April 27, 2020, the Individual indicated that he continued to consume alcohol, but was limiting his alcohol use to two drinks per sitting, once or twice each week, and was not drinking to intoxication. *Id.* at 1. The Individual further reported that he had not sought treatment for problematic alcohol consumption. *Id.*

On January 11, 2021, the Individual underwent another PEth test. Ex. 12. The test was positive at 277 ng/mL. *Id.*

V. HEARING TESTIMONY

The Individual acknowledged in his hearing testimony that he told the OPM investigator that he stopped drinking alcohol for a period, and that he denied consuming alcohol in his response to the 2019 LOI. Tr. at 13–15. The Individual also acknowledged that the information he provided to the

DOE Psychologist was inconsistent with the information he provided to the OPM investigator and in response to the 2019 LOI. *Id.* at 15–17. The Individual denied that the first law enforcement encounter (involving Ex-Wife A) was an alcohol-related event because he had not consumed too much alcohol to drive, and because law enforcement had directed him to leave which would not have occurred if he was intoxicated. *Id.* at 19–20.

The Individual denied that he intended to commit suicide when he sent the message that led to the second law enforcement encounter. *Id.* at 21–23. The Individual admitted that he sent a message indicating that his problems were “nothing a gun couldn’t fix,” but represented that the recipient of the message was overly sensitive to his remark due to the recent suicide of one of her friends. *Id.*³ With respect to the third law enforcement encounter, the Individual indicated that he had agreed to go to the crisis center at law enforcement’s request and left the next day because the center had no concerns that he would harm himself. *Id.* The Individual denied any recollection of drinking alcohol heavily prior to the third law enforcement encounter. *Id.* at 26–27. The Individual acknowledged that a written report from a counselor at the crisis center indicated that he had reported consuming too much alcohol prior to the incident, but he denied any recollection of that conversation with the counselor. *Id.* at 41–42.

The Individual testified that he never believed that he was drinking “heavily” during the period of the law enforcement encounters. *Id.* at 27–28. However, the Individual admitted that there were “a couple of times when [he] did get inebriated” prior to the date he met with the DOE Psychologist. *Id.* at 35. The Individual testified that he currently consumes alcohol, but not to intoxication, and that he last consumed alcohol the weekend prior to the hearing. *Id.* at 29–30. The Individual estimated that he consumed two drinks per day on each of the two weekends prior to the hearing. *Id.* at 30. The Individual indicated that he attended life coaching and mentoring for the purpose of personal development, and that his wellbeing had increased since the end of his “toxic” relationship with Ex-Wife A, but that he had not pursued treatment for problematic alcohol consumption. *Id.* at 32–33. The Individual also noted as evidence of his good character that he was well-regarded at work and had received promotions. *Id.* at 33; *see also* Ex. A–I (reflecting that the Individual received positive performance evaluations at work and was held in high esteem by several colleagues). The Individual denied reading the DOE Psychologist’s Report or her recommendations. *Tr.* at 42–43.

The Individual denied that he had intentionally lied to the OPM investigator or in response to the 2019 LOI. *Id.* at 46–47. The Individual indicated that he had made the decision to stop drinking on multiple occasions, but then returned to drinking, and that his inconsistent statements “might be” the product of changes in his intentions with regard to alcohol. *Id.* at 47–48. The Individual asserted that he had attempted to clarify his drinking behavior during the clinical interview with the DOE Psychologist. *Id.* at 48. The Individual expressed that he would not object to abstaining from alcohol at the recommendation of the DOE Psychologist. *Id.* at 50–51.

³ The Individual testified during the hearing that he “received a social media message from a female who I . . . met in 1996, ‘97 and had not spoken to . . . in probably 10 to 15 years [who] found me on social media and sent out a message to me just saying ‘hi, how are you doing.’ And I replied in the message, nothing that a gun can’t fix.” *Tr.* at 22. Contrary to the Individual’s account, the police report from the incident indicated that the woman in question “had been friends [with the Individual] for approximately 18 years . . . [and] because she is married she does not talk with him on the phone but does use a texting app to stay in touch with him . . . [and] could tell that [he] was having a bad night . . .” Ex. 6 at 18.

The DOE Psychologist B testified at the hearing concerning his impressions of the DOE Psychologist's Report and the Individual. The DOE Psychologist B indicated that he had spoken with the DOE Psychologist prior to her drafting the Report, and that he concurred with her diagnosis of the Individual with AUD, Moderate, with the caveat that he would have found that the Individual met one fewer of the diagnostic criteria under the *DSM-5*. *Id.* at 54–56. The DOE Psychologist B testified that his difference of opinion would not have changed the diagnosis of the Individual. *Id.* at 56.

The DOE Psychologist B testified that the results of the alcohol tests immediately following the clinical interview with the DOE Psychologist demonstrated that the Individual was drinking heavily and had been doing so for approximately three weeks. *Id.* at 57–62.⁴ The DOE Psychologist B testified that the results of the latest PEth test administered in January 2021 showed that the Individual had been drinking heavily, either daily or bingeing on several occasions per week, and that the results could not have been produced by the Individual's claimed drinking levels. *Id.* at 62–64.

The DOE Psychologist B indicated that abstinence from alcohol for a period of twelve months is a common benchmark for measuring a person's ability to control his or her drinking, and that he would recommend that the Individual permanently abstain from consuming alcohol in light of the laboratory evidence of his heavy drinking. *Id.* at 65. The DOE Psychologist B further endorsed the DOE Psychologist's recommendation that the Individual participate in an IOP and AA. *Id.* at 66. He also expressed the opinion, based on his professional experience, that the Individual's threats of suicide were evidence of a psychological condition, and that he endorsed the DOE Psychologist's recommendation that the Individual pursue psychological treatment for symptoms of depression. *Id.* at 67–68.

The DOE Psychologist B opined that the Individual had not demonstrated rehabilitation or reformation, based on the inconsistency of his statements with the results of the laboratory testing and failure to pursue treatment. *Id.* at 69–72. The DOE Psychologist B opined that the Individual's prognosis for recovery was poor. *Id.* at 72.

VI. ANALYSIS

A. Guideline E

The LSO's allegations that the Individual provided inconsistent or misleading information about his consumption of alcohol during the security investigative process raises security concerns under Guideline E. Adjudicative Guidelines at ¶ 16(b). An individual may mitigate security concerns under Guideline E if:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

⁴ The Expert Psychologist also observed that the Individual's EtG test result of 68,830 ng/mL was "huge" and "one of the highest we've ever seen." Tr. at 61.

- (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.

Id. at ¶ 17(a)–(g).

The Individual asserted that any inconsistencies in his accounts of his drinking were attributable to his changing intentions with respect to alcohol consumption, and that he made a good faith effort to resolve unintentional inconsistencies during the clinical interview with the DOE Psychologist. *Supra* p. 6. These claims are logically inconsistent with the information that the Individual provided to the OPM investigator and in response to the 2019 LOI. In both instances, the Individual indicated that he had not consumed alcohol since his third law enforcement encounter in late 2017. *Supra* p. 4. However, the Individual told the DOE Psychologist that he had consumed alcohol, albeit at what he characterized as a reduced level, since 2017. *Id.* I find that the Individual's assertion that he did not intend to deceive the OPM investigator or LSO because he intended to stop consuming alcohol is not credible, and therefore not indicative of good faith. Moreover, his admission to the DOE Psychologist in the clinical interview that he consumed alcohol after 2017 came months after his untruthful response to the 2019 LOI, and over a year after his untruthful statements to the OPM investigator. Thus, I find that the Individual's efforts to resolve the inconsistencies in his statements were neither prompt nor in good faith. Accordingly, the first mitigating condition under Guideline E is inapplicable. Adjudicative Guidelines at ¶ 16(a).

The Individual's misleading statements were neither minor nor unlikely to recur, and in fact the Individual made similarly dubious statements during the hearing itself. Nor has he acknowledged the behavior or taken steps to address the problematic drinking that led to the misrepresentations. The Individual's statements to the OPM investigator and in response to the 2019 LOI acted to conceal his true level of drinking and, if accepted as true without further inquiry, would have significantly affected the LSO's review of the Individual's eligibility for a clearance. Moreover, the Individual has taken no steps to address his problematic alcohol consumption and the results of the most recent PEth test strongly suggest that the Individual misrepresented his level of alcohol

consumption during the hearing. Thus, I find that the third and fourth mitigating conditions under Guideline E are inapplicable in this case. *Id.* at ¶ 16(c)–(d).

The remaining mitigating conditions under Guideline E are inapplicable to the facts of this case. Having concluded that the Individual has not satisfied any of the mitigating conditions under Guideline E, I find that he has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline G

The Individual's encounters with law enforcement resulting from a domestic dispute and suicidal messages after consuming alcohol, as well as the DOE Psychologist's diagnosis of the Individual with AUD, raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (d).⁵ The Individual denied that he consumed alcohol excessively, but indicated that he was willing to pursue treatment and abstain from alcohol if necessary. Tr. at 43–45. An individual may mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)–(d).

During the hearing, the Individual insisted that he consumed alcohol in moderation, despite the latest PEth test providing strong evidence to the contrary and denied that problematic alcohol consumption was a contributing factor in his law enforcement encounters. This behavior mirrors his statements to the DOE Psychologist that he consumed alcohol in moderation, despite laboratory evidence that he was consuming extremely heavy volumes of alcohol, as well as his misrepresentations to the OPM investigator and LSO that he had stopped consuming alcohol.

⁵ The LSO also alleged that the Individual's decisions to consume alcohol and not pursue treatment after meeting with the DOE Psychologist raised security concerns under Guideline G. An individual's failure to follow treatment advice or consumption of alcohol against treatment recommendations after being diagnosed with AUD raises security concerns under Guideline G. Adjudicative Guidelines at ¶ 22(e)–(f). However, the Individual denied receiving the DOE Psychologist's Report until it was provided to him as part of the LSO's exhibits in connection with the hearing, and denied knowledge of the DOE Psychologist's treatment recommendations. Tr. at 43–44. The LSO did not produce any evidence contradicting the Individual's claims. Given my findings below regarding the other Guideline G allegations, I need not address this issue.

Whether these misstatements of his alcohol consumption are willful deception or a symptom of his AUD, the Individual's judgment and reliability are compromised as a result of his alcohol consumption. Moreover, the Individual indicated that he had not pursued any treatment for his problematic alcohol use. The DOE Psychologist B corroborated the DOE Psychologist's diagnosis and opined that the Individual's prognosis was poor.

As the Individual's consumption of alcohol led him to exercise poor judgment in his personal life, the Individual's AUD is not being controlled through treatment, the most recent PEth test shows that the Individual continues to heavily consume alcohol, the Individual understated his alcohol consumption during the hearing despite contrary evidence from the PEth test, and the DOE Psychologist B provided a poor prognosis for the Individual, I find that none of the mitigating conditions under G are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

C. Guideline I

The DOE Psychologist's opinion that the Individual's dishonesty, poor decision-making, history of depressive symptoms, and failure to follow professional recommendations for treatment comprise a mental condition which can impair his judgment, stability, reliability and trustworthiness raise security concerns under Guideline I. Adjudicative Guidelines at ¶ 28(b). An individual may mitigate security concerns under Guideline I if:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) there is no indication of a current problem.

Id. at ¶ 29(a)–(e).

The Individual acknowledged that he had felt depressed over various adverse life events, such as the death of a friend and his divorce from Ex-Wife A, when he sent messages indicating his distress; however, he asserted that he had not made a genuine suicide threat, and that the messages that he sent mentioning suicide were taken too seriously by the recipients of the messages. *Supra* p. 6. The DOE Psychologist B opined that the Individual's suicide threats were serious, not idle as

the Individual claimed, and indicative of a psychological condition requiring professional diagnosis and treatment. *Id.*

While the Individual asserts that his messages were not, in fact, suicidal threats, it is clear from the repeated police response that a reasonable person would believe otherwise, thus reflecting a serious defect in his judgment and stability. The Individual has neither consulted with a psychological professional who can provide an up-to-date clinical opinion on the Individual's psychological wellbeing, nor pursued treatment. While the Individual testified as to his improved emotional state since his divorce from Ex-Wife A, I am not convinced that the psychological or emotional causes of the Individual's instability are unlikely to recur should he experience setbacks in his life in the future. Thus, I find that none of the mitigating conditions under Guideline I are applicable in this case, and that the Individual has not resolved the security concerns asserted by the LSO.

VII. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines E, G, and I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals