DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-00396
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

07/08/2025

Decision on Remand

HYAMS, Ross D., Administrative Judge:

Applicant mitigated the alcohol consumption, criminal conduct, and psychological conditions security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 27, 2020. On March 21, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines: G (alcohol consumption), J (criminal conduct), and I (psychological conditions). Applicant answered the SOR on June 30, 2022, and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2023.

The hearing convened on November 30, 2023. Department Counsel submitted Government Exhibits (GE) 1-4, which were admitted in evidence without objection. Applicant provided documentation with her SOR Answer which was labeled Applicant's Exhibits (AE) A-CC. She provided no further documentation at the hearing.

On July 3, 2024, after considering the record, I issued a decision granting Applicant's request for a security clearance. The government appealed the decision with respect to the findings under Guideline I, but did not appeal the favorable findings for Applicant under Guidelines G and J. On October 17, 2024, the Appeal Board remanded the case for more detail to be added concerning the findings under Guideline I. In this decision, the information concerning Guidelines G and J remains, as it gives context to the overall issues and security concerns in this case.

On November 18, 2024, the government moved to reopen the record in the case to submit new evidence and have another hearing with new witness testimony. However, the government's request did not summarize the proffered testimony of the witnesses or otherwise offer specific enough information to warrant a new hearing. The government did not offer affidavits from witnesses or a new mental-health evaluation. I denied the motion for a hearing.

Findings of Fact

Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact.

Applicant is 51 years old. She has worked as the director of a software management project for a defense contractor since November 2020. She earned a bachelor's degree in 1996. She married in 2019 and has two adult stepchildren. (Tr. 21-23; GE 1)

Under Guideline G, SOR ¶ 1.a alleged in May 2021, Applicant pled nolo contendere to driving under the influence of alcohol (DUI). Her driver's license was suspended for six months, and she was placed on 12 months of probation. She was required to attend a DUI school, complete 50 hours of community service, and pay court costs. The SOR cross-alleges this allegation under Guideline J in ¶ 2.a.

Applicant lived alone her entire adult life before she was married in 2019. The home she purchased in 2015 was small with an open floor plan. The home mortgage is completely paid off. When she married, she and her husband planned to temporarily reside in her home, however the start of the COVID-19 pandemic impacted their plans to move. (Tr. 24-64)

Applicant's stepsons both have autism and need special care. One child has required several in-patient mental health treatments for self-harm incidents. She described him pacing in circles for hours and exhibiting unusual behaviors. The other child is aloof and socially disengaged. Her husband has joint custody of the children, and they stay with them for a week at a time. Living with them in a larger home in normal times was difficult. She stated being in a smaller home with them for long periods during the COVID-19 pandemic was unbearable for all of them. (Tr. 24-64)

In July 2020, Applicant's dog of 15 years passed away, and this loss caused her extreme grief. After a change in management at her job, she found a new job in October 2020 working for a friend. On the Saturday before she was scheduled to start work, she went to this friend's house with a bottle of wine to catch up and socialize. She reported being there for two hours and having two glasses of wine. She asserted that she was not impaired when she left her house. (Tr. 24-100; AE F; GE 2, 3)

Applicant called her husband on the way home and could hear him making a mess in the kitchen and the TV blaring in the background. She felt unwelcome in her own home; she was still grieving the death of her dog; and she needed some time alone. She parked at a school a few blocks from home, listened to the radio, and drank from another bottle of wine she had with her. She asserted that she was parked and not driving and intended to have her husband walk to the car and drive her home. Police approached her parked car and arrested her for DUI. Her blood alcohol content was around .20, which is well beyond the legal limit. (Tr. 24-100; AE F; GE 2, 3)

The day after her DUI arrest, Applicant informed her new boss and a company executive of the DUI arrest, and she was able to start her new job. She completed a DUI class, and the requirements of her sentence and probation without issue. She has not had any alcohol-related arrests or incidents before or after the October 2020 arrest. She reported that she has not drank alcohol since the DUI arrest in October 2020 and is ashamed of the incident. (Tr. 24-100; AE F, G; GE 2, 3)

Under Guideline I, the SOR alleges the following:

SOR ¶ 3.a alleged in 2020 Applicant was diagnosed with bipolar disorder and was treated by a psychiatrist from about 2011-2021. In January 2022, Dr. B, a DoD-connected psychologist, diagnosed her with bipolar disorder and an unspecified anxiety disorder. Alcohol use disorder was ruled out.

SOR ¶ 3.b alleged Applicant discontinued her treatment and medication against medical advice and has not returned to see her psychiatrist since June 2021.

SOR ¶ 3.c alleged Applicant was evaluated by Dr. B in January 2022. The allegation stated Dr. B used background information, a clinical interview and observations, and a personality assessment for her evaluation. Dr. B stated that Applicant acknowledged a history of bipolar disorder and denied that she needed continuous treatment for this condition. Dr. B's report stated that without treatment or medication it was possible for episodes or symptoms of depression or hypomania to occur. Dr. B noted that documentation had showed that at times Applicant had requested to reduce medication and later needed additional or different medications. Dr. B also stated that while Applicant was doing well, she showed signs of hypomania during the interview. Dr. B reported that Applicant does not think she needs mental health interventions or medications at this time, and discontinued treatment against medical advice. Based on these factors, Dr. B concluded her prognosis is poor, and her judgment, reliability, and trustworthiness are likely to be impaired.

In her Answer, Applicant denied the Guideline I SOR allegations in ¶¶ 3.a-3.c.

Applicant has experience using medical care to assist her in difficult periods of life. When she was a child, her brother was killed in a car accident, and she was given anti-depressant medication. In about 2002, after a job loss, Applicant saw a therapist for depression, received anti-depressant medication, and terminated their relationship and medication usage after she felt better. Applicant stated that she has experienced depression at times in her life, but never had a manic episode, nor had anyone ever expressed concern she was manic or unstable. She asserted that she was never depressed without a valid reason, such as death of a loved one or job loss. She has never been hospitalized, accused of erratic behavior, or been involved in any incidents at work or with the police, outside of the 2020 DUI. She is professionally focused and a high achiever, and job loss has impacted her hard. (Tr. 24-100)

In about 2011, Applicant lost her job and was depressed. She sought a psychiatrist to obtain medication to treat these feelings, so she could move forward. She found Dr. L through an internet search. Her initial visit with him lasted about 30 minutes. The first year she saw him about once a month for 5-10 minutes at a time. They tried several different combinations of medications, and the purpose of these visits was to determine which medication was best for her. After this initial period, her subsequent appointments occurred quarterly, still lasting between 5-10 minutes at a time, for prescription refills. Dr. L only provided medication, and did not do psychotherapy or counseling. She described him as a "pill doctor." The medication prescribed was intended to stabilize her feelings of anxiety or depression. She testified that Dr. L did not do any testing with her, and he did not give her a formal diagnosis, he just treated her symptoms. There are no treatment records in this case from Dr. L, and no records showing a diagnosis, prognosis, treatment plan, recommendations, or conclusions. The only information about Dr. L in the record, other than Applicant's testimony, is a summary of a phone conversation Dr. B had with him in January 2022. (Tr. 24-100; GE 4)

Dr. L prescribed Applicant a widely used anti-depressant "W", anti-anxiety medications "K" and "B" for use as needed, and mood stabilizer "L". Applicant testified that over the years, on her own initiative, she requested varying dosages and changes to her medications to find what worked best for her. Dr. B's report corroborates this testimony. In 2015, after four years of trying varying combinations and dosages, she did not feel the medications were improving her quality of life. Knowing that she could not just stop taking medication, she worked with Dr. L to wean off the anti-depressant "W". She successfully stopped taking this medication without repercussion, and without objection from Dr. L. In July 2020, after her dog died and she felt grief, she requested to take anti-depressant "W" again for a short time. She took this medication only for three months and has not used it again. (Tr. 24-100)

Dr. L also prescribed Applicant anti-anxiety medication "K" and "B" for use as needed. She reported that these were taken in rare circumstances. If she had a big presentation, she would take "B" prior to the presentation to take the edge off, or if she was stressed and could not sleep, "K" would help her fall asleep. The last time she

reported taking the anti-anxiety medication was at Thanksgiving in 2021, when she was at her in-law's house for a stressful family holiday dinner. (Tr. 24-100)

Over time, Applicant had developed a strong relationship with her primary care physician, maintained steady appointments with her, and relied on her for medical and medication advice. She also received medical and medication advice from her mother, who is a registered nurse with 40 years of experience, and her best friend, who is a pharmacist with over 20 years of experience. Since Dr. L was only acting as a pill doctor and not providing her with mental or physical health care, she relied on him less over time. After years of quarterly five-minute prescription renewal appointments, she felt he was only putting minimal effort into their interactions; he was not looking for long term solutions; and she had developed a better support system with these other professionals. (Tr. 24-100)

Over the years, Applicant consulted with her primary care physician, RN mother, and pharmacist best friend about treatment for her rheumatoid arthritis. They had researched the medications and found that mood stabilizer "L' that she had been taking could hinder her arthritis medication and harm her physical health.

In June 2021, after her DUI case was resolved, Applicant told Dr. L she wanted to wean off the mood stabilizer medication. This medication was not making her feel better anymore, and it might be causing unnecessary joint pain. Dr. L had only had phone appointments with her after the COVID-19 pandemic started. Their last appointment was a five-minute phone call, a similar amount of time as her other appointments had been. She asserted that Dr. L. was not adamantly opposed to her stopping mood stabilizer "L". She told him that she would reach out to him if there was a change or if she needed prescription assistance from him. Since she did not need any further assistance from him, their June 2021 phone call was their last appointment. No future appointments had been scheduled. She started seeing Dr. L on her own violation and then terminated her relationship with him when she no longer needed medication from him. After that call she never heard from Dr. L again. He did not ask her to come in and discuss the matter further. He did not make a follow-up phone call or send her a letter. The relationship ended without any further effort or communication by Dr. L. She was completely off the mood stabilizer for six months with no problems. (Tr. 24-100)

In January 2022, Applicant was required by the DCSA to meet with Dr. B, a DoD-connected psychologist, as part of the security clearance process. They had a 30-minute online meeting via Zoom. Applicant is a social, outgoing, and talkative person, but recalled being nervous in the meeting. She was asked about her hobbies and talked about her love of gardening. The reason for the evaluation was still unclear to Applicant, and she asked Dr. B several times if she was in trouble. She reported Dr. B was cold, judgmental, and condescending to her. Prior to the meeting, Dr. B had Applicant complete an online questionnaire for about an hour. Other than Applicant's SCA, the specific records reviewed and relied upon by Dr. B were not identified or included with her report or submitted into the record for this case. (Tr. 24-100; GE 4)

Dr. B's report contains a summary of a telephonic consult she had with Dr. L. She did not state if Dr. L had reviewed his treatment records in preparation for the call or if he was just speaking from memory. Dr. L had not talked to Applicant for seven months at that point and had not seen her in person for about two years. Dr. B's report relies entirely on the telephonic consult with Dr. L for her findings regarding bipolar disorder. Nowhere in the report did Dr. B state that she obtained or reviewed any treatment records from Dr. L. (Tr. 24-100; GE 4)

Dr. B wrote that she asked Dr. L about Applicant's diagnosis. He did not have a definitive answer. She wrote that he "opined" that she was most consistent with Bipolar II disorder or a mixed bipolar condition. In the diagnostic impressions section of the report, she wrote that Dr. L stated he was unsure of Applicant's most accurate diagnosis because he was focused on treating her symptoms. Dr. B also wrote that Dr. L had never seen evidence of Applicant having a full manic episode, but claimed he had observed some hypomania. No further information was provided about what he observed or when he observed it. After the first year, his opportunities to observe her were limited, as their appointments occurred quarterly for five-minutes to renew prescriptions and were only by phone once the COVID-19 pandemic started. (Tr. 24-100; GE 4)

In her report, Dr. B wrote that Applicant's tone in a short voicemail and her interest in gardening expressed during their 30-minute online interview, indicated hypomania. Furthermore, Dr. B wrote that Applicant's statement that she was in a reading frenzy, reading lots of books, when discussing her current hobbies, also suggested she was in a hypomanic state. Applicant asserted she has never been manic or hypomanic. When specifically asked in direct and cross examination, none of the three witnesses in this case observed manic or hypomanic behavior, nor was it noted in any way in the performance evaluations or 11 character letters. (Tr. 24-118; GE 4; AE L-BB)

Dr. B reported her observations of Applicant in the mental status examination section. She stated Applicant was alert and oriented, neatly dressed and groomed, friendly, polite, and cooperative. Dr. B reported that she showed no signs of psychosis. She did not make any mention of hypomania in this section of the report. (GE 4)

Dr. B had Applicant take the Personality Assessment Inventory (PAI) online, which took about 45 minutes to complete. No information was submitted into evidence about the purpose of this test and if this test is scientifically validated or the accepted standard to screen for bipolar disorder. (GE 4)

Dr. B wrote that Applicant (in the PAI) was consistent in her response style and understood the item content. The report follows that statement with unintelligible language and then suggests that Applicant may have not answered in a completely forthright manner to present herself in a consistently favorable light and free of common shortcomings. Dr. B did not provide any information if this is common phenomenon for persons taking this test or in answering questions about themselves in general. (GE 4)

Dr. B wrote that Applicant (in the PAI) was reluctant to acknowledge personal limitation and denied distress and internal consequences that "might" arise from such limitations, and that Applicant is unaware of problems or other areas where functioning is less than optimal. Dr. B did not explain the basis for that conclusion or explain if this is a common result for people who are not in distress and have good mental health. (GE 4)

Dr. B wrote there were no elevations in the testing other than the positive impression scale and treatment rejection scale. Dr. B wrote that Applicant's responses to the PAI "suggest" she is satisfied with herself as is, she is not experiencing distress, and as a result sees little need for changes in her behavior. Dr. B did not specify if that language was a test finding or her commentary or analysis, the basis for that conclusion, or if these were positive results. (GE 4)

Dr. B's report does not actually state the specific findings of the PAI testing, nor did she provide a copy of the results with her report. Dr. B wrote that the resulting PAI profile is "likely" not a true depiction of her current presentation. However, Dr. B does not specifically say why the test findings, which she did not report, should be discounted other than the comment that Appellant wanted to make a positive impression during the test. Dr. B did not state why she also did not discount any of the negative conclusions she made from the report for the same reason. Furthermore, Dr. B did not explain why she did not conduct other testing with Applicant if she thought the results of the PAI test were faulty. (GE 4)

Dr. B based her findings and diagnosis in the report on her impression of Applicant from their interview, the PAI testing, her telephonic consult with Dr. L, and "available records." Dr. B did not state how long their interview lasted; however, Applicant repeatedly asserted it was no more than 30 minutes. (Tr. 24-100; GE 4)

Dr. B's report contains errors that undermine her findings, and some of the content of the report supports Applicant's testimony about her history of care. (Tr. 24-100; GE 4)

In the first paragraph of Dr. B's report, it states that Applicant has a well-documented history of bipolar disorder and adjustment disorder with anxiety. However, there is no documentation in the record supporting such an assertion regarding bipolar disorder. Dr. B did not identify any records she reviewed to make this conclusion, nor were such records submitted into evidence. This first assertion of a "well-documented history" is incorrect as it is not well documented. Applicant testified about experiencing anxiety in certain circumstances. (GE 4)

In the development history section of the report, Dr. B stated that Applicant did not receive any mental health interventions after her brother was killed in a car accident. Dr. B also wrote that neither she nor Dr. L knew about previous therapeutic uses of anti-depressant medication. However, Applicant was prescribed anti-depressant medication as a child after her brother died, and in 2002 after being laid off from employment. Dr. L should have been aware of these facts from the start of their relationship. (Tr. 24-100; GE 4)

The mental health history section of the report incorrectly states Applicant's dog died around the time she was laid off from her job in 2010, and these incidents led her to seek treatment with Dr. L for her symptoms. She specifically notes Applicant was tearful discussing the dog. Dr. B's timeline is ten years off; Applicant testified that her dog died in July 2020 causing grief and depression for a few months. Dr. B also added these mistaken facts in the legal history section of the report where she listed Applicant's stressors that led to her October 2020 DUI. Dr. B specifically states that Applicant reported grief from the death of her dog as one of the stressors. She wrote that the death of the dog "is of note that this was reported earlier in the interview as occurring… ten years prior." (Tr. 24-100; GE 4)

Dr. B reported that anti-depressant "W" and mood stabilizer "L" were taken by Applicant the majority of her ten-year treatment. Dr. B. wrote that on several occasions, Applicant requested to discontinue the antidepressant "W", but it would need to be prescribed again each time because of a breakthrough of depression symptoms. However, Applicant weaned off anti-depressant "W' in 2015 and only went on it again one time, for three months in 2020, after her dog died, and then discontinued it for good. (Tr. 24-100; GE 4)

Dr. B's report states that five years ago Applicant became so depressed that she had to take anti-psychotic "A" for several months. This medication was not part of Applicant's medication history, and there is no other information in the record supporting that she took it. Applicant's medication regime was discussed at length in direct and cross examination, and during my questioning. This medication was not mentioned and is not part of the record. Dr. B seems to be confusing this medication with anti-depressant "W", which Applicant weaned off in 2015 and asked to retake for three months in mid-2020, after her dog died. (Tr. 24-100; GE 4)

Dr. B wrote that Applicant told her that she was diagnosed with bipolar disorder. Applicant disputes making that statement. She asserted she was never given a diagnosis by Dr. L; he never did any testing or therapy with her to find a diagnosis; and he only provided her with prescriptions. There is no medical documentation in the record showing that diagnosis. There are other places in the report where Dr. B put Applicant's statements in quotes, and Applicant disputes whether some were actual quotes. (Tr. 24-100; GE 4)

The Diagnostic and Statistical Manual of Mental Disorders (5th Edition) (DSM 5) provides that a diagnosis of "Bipolar II disorder, require[s] the lifetime experience of at least one episode of major depression and at least one hypomanic episode . . . . [T]he instability of mood experienced by individuals with bipolar II disorder is typically accompanied by serious impairment in work and social functioning." (DSM 5 at 123) The diagnostic criteria for major depression, manic episode, and hypomania are detailed in DSM 5 at 124-126.

In her report, Dr. B diagnosed Applicant with bipolar disorder. The generic diagnosis of bipolar disorder is not found in the DSM 5. The only apparent basis for this diagnosis is her telephonic consult with Dr. L. Dr. B did not list which diagnostic criteria

supported her diagnosis. Dr. B's diagnosis lacked other important details: she failed to state whether she found Applicant's current or most recent episode was hypomanic or depressive; whether Applicant was in full or partial remission; and if not in remission, whether the episode was mild, moderate, or severe. (GE 4)

At the end of the report, Dr. B found that despite the fact that Applicant is doing well off the mood stabilizer, Applicant showed signs of hypomania in the interview (as previously discussed above). The DSM 5 criteria for a Hypomanic Episode is as follows:

> A. A distinct period of abnormally and persistently elevated, expansive, or irritable mood and abnormally and persistently increased activity or energy, lasting at least 4 consecutive days and present most of the day, nearly every day.
>
> B. During the period of mood disturbance and increased energy and activity, three (or more) of the following symptoms (four if the mood is only irritable) have persisted, represent a noticeable change from usual behavior, and have been present to a significant degree:
> 1. Inflated self-esteem or grandiosity.
> 2. Decreased need for sleep (e.g., feels rested after only 3 hours of sleep).
> 3. More talkative than usual or pressure to keep talking.
> 4. Flight of ideas or subjective experience that thoughts are racing.
> 5. Distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli), as reported or observed.
> 6. Increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation.
> 7. Excessive involvement in activities that have a high potential for painful consequences (e.g., engaging in unrestrained buying sprees, sexual indiscretions, or foolish business investments). (DSM 5 at 124)

Dr. B's report does not indicate how she could make this diagnosis within a 30-minute meeting. She did not describe how she or Dr. L conducted observations on the four consecutive days that are required by the DMS 5, nor did she describe three or more criteria that were established.

Dr. B found that because Applicant took an anti-anxiety pill two months prior (Thanksgiving 2021), she must remain under Dr. L's care. However, Dr. B did not say if she considered that Applicant was under her physician's care. Dr. B found that Applicant discontinued her treatment with Dr. L against medical advice. However, there is no documentation in the record showing that Applicant discontinued her treatment against medical advice. Nevertheless, Dr. B stated Applicant's prognosis is poor and her judgment, reliability, and trustworthiness are "likely" to be impaired. (GE 4)

Applicant testified that during the 30-minute online meeting, Dr. B made repeated negative comments to Applicant about her decision to stop her use of mood stabilizer "L". She also asked several times if she was "discharged" from Dr. L's care. Applicant reported

Dr. B gave her the impression that without taking mood stabilizer "L" she would be unable to keep her job. In February 2022, Applicant consulted with her physician and medical advisers and started retaking mood stabilizer "L". It is now prescribed and monitored by her physician and has been taking it consistently since February 2022. She never reestablished a relationship with Dr. L. (Tr. 24-100)

In May 2022, after receiving the SOR, Applicant reported that she was shocked by Dr. B's findings. She met with Dr. P for a fresh evaluation and professional opinion. Dr. P is a Doctor of Psychology near her home. He professionally knows Dr. L. He had Applicant take the Minnesota Multiphasic Personality Inventory 2 test (MMPI-2), a 567-question assessment, which helps assess and diagnosis mental health conditions. Applicant also met with Dr. P in person for several hours for a biopsychosocial assessment. In his report, Dr. P stated that the evaluation and the testing showed that Applicant's personality was within normal limits. Based on his testing, interactions and assessment, he diagnosed her with adjustment disorder with anxiety. He found no current evidence of bipolar disorder. He stated that her prognosis was good, and she is reliable, stable, and trustworthy. One error in Dr. P's report is that he wrote Applicant had a DUI from many years ago, when it had occurred in 2020; however, this error does not undermine the findings of the report. (Tr. 24-100; AE H, I)

In May 2022, Applicant also met with Dr. H, a physician with 50 years of experience, who is an addiction specialist. He did an online interview with her and reviewed her health records. Dr. H's report found that she does not have major depressive disorder, and he does not believe she has bipolar affective disorder. He stated that depression affects 50% of the population and medication to treat the condition as needed is appropriate. He did not find that she has a problem with alcohol and was pleased she gave it up after the DUI incident. (Tr. 24-100; AE J)

Witness One has been Applicant's supervisor since 2020 and has known her since 2013. She was with her on the day of the DUI, and said Applicant was not impaired when she left her home. She has no concerns about Applicant's demeanor or any substance abuse. She stated that Applicant is an excellent employee, and her performance is outstanding. She is reliable, trustworthy, and should be granted a security clearance. She has not witnessed Applicant act unstable or hypomanic. (Tr. 102-108)

Witness Two, a Vice President at the defense contractor Applicant works for, has known her since 2020. She reported the DUI to him the day after it occurred, and he said she was embarrassed and distraught. He has no concerns about her demeanor or alcohol use. He stated that she is a great employee, fits in well with the team, and should receive a security clearance. He has not witnessed Applicant act unstable or hypomanic. (Tr. 108-113; AE O)

Witness Three, Applicant's work colleague, stated Applicant is professional, and process and detail oriented. She has witnessed no issues with alcohol or demeanor, and reports Applicant is consistently stable. She has not witnessed Applicant act unstable or hypomanic. (Tr. 113-118; AE T)

Applicant provided documentation showing her work performance, awards, and training achievements. The reviews describe her as reliable, exceeding expectations, superior, and an essential contributor. She also submitted 11 character letters from work colleagues, which state that she is a good and skilled employee, reliable, trustworthy, and fit to hold a security clearance. None of the content of the character letters or the performance evaluations describe her in a way that can be seen as unstable, manic, or hypomanic. (AE L-BB)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." 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. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 details the alcohol consumption security concern:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

I have considered the disqualifying conditions for alcohol consumption under AG ¶ 22 and the following is potentially applicable:

> (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant was arrested for a DUI in 2020. AG ¶ 22(a) applies.

I have considered the mitigating conditions under AG ¶ 23. The following are potentially applicable:

> (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; and
>
> (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.

AG ¶¶ 23(a) and (b) apply. Applicant had one DUI arrest five years ago, under unusual circumstances during the COVID-19 pandemic. She never had an alcohol-related incident before this arrest, and there have been no subsequent problems. Applicant credibly reported that she stopped consuming alcohol after this incident. This happened under such unusual circumstances that it is unlikely to recur, and does not cast doubt on

her current reliability, trustworthiness, or judgment. She has successfully abstained from alcohol use, provided evidence of actions taken to overcome the problem, and has demonstrated a clear and established pattern of modified consumption or abstinence. The alcohol consumption security concerns are mitigated.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The allegation in SOR ¶ 2.a is considered under the following security concern under AG ¶ 31:

> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

SOR ¶ 2.a cross-alleged SOR allegations in ¶ 1.a. The Guideline G allegations were found for Applicant and the same analysis applies. I have considered the mitigating conditions under AG ¶ 32. The following are potentially applicable:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and (d) apply. Applicant had one DUI arrest five years ago, under unusual circumstances during the COVID-19 pandemic. She never had an alcohol-related incident before this arrest, and there have been no subsequent problems. She has no other arrests or criminal charges. She credibly reported that she stopped consuming alcohol after this incident. This happened under such unusual circumstances that it is unlikely to recur, does not cast doubt on her current reliability, trustworthiness, and judgment. Applicant provided rehabilitative evidence including documentation of training, awards and work performance, compliance with her sentence and terms of parole, and relevant witness testimony and character letters. There is ample evidence to find there has been successful rehabilitation, and mitigation by the passage of time and other factors. The criminal conduct security concerns are mitigated.

Guideline I, Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

> Certain 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. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

I have considered the disqualifying conditions for psychological conditions under AG ¶ 28 and the following are potentially applicable in this case:

> (a) 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;
>
> (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and
>
> (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Despite the errors and omissions, Dr. B's report for the security clearance process establishes AG ¶¶ 28(a) and (b). AG ¶ 28(d) was not established. There are no medical records or documentation in this case showing a prescribed treatment plan that Applicant failed to follow. There was no evidence that Applicant failed to take prescribed medication or attend required counseling sessions. Dr. L did not offer Applicant counseling sessions, and there was no legal requirement or involuntary nature to their relationship. Applicant weaned off a medication she no longer needed; she did not fail to take medication that she needed for stability. Applicant's testimony and Dr. B's report show that Applicant's medication regime changed many times over the years, and her effort to wean herself from mood stabilizer "L" was part of that effort. Applicant discussed the medication changes and the reasons why with Dr. L, and there were no consequences to going off that medication. Applicant has autonomy and a right to work with her medical providers to make changes to her care. AG ¶ 28(d) does not apply.

I have considered the mitigating conditions under AG ¶ 29. The following are potentially applicable:

> (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; and
>
> (e) there is no indication of a current problem.

AG ¶ 29(a) applies. Applicant has a history of experiencing anxiety and depression at times in her life. She testified that she was never depressed without a good reason. Anxiety and depression are normal human emotions the majority of the population experiences throughout life. Neither of these conditions are disqualifying for persons possessing a security clearance. Applicant established that she has sought medication to treat anxiety and depression, when needed, until the issue causing the emotion resolves. These conditions are readily controllable with treatment, and she demonstrated ongoing and consistent compliance with treating those conditions when necessary. Although there is no documentation of a treatment plan in this case, Applicant established that she consistently took her medication and attended her appointments with Dr. L. Applicant's testimony and the two medical reports she submitted in evidence rebut Dr. B's diagnosis that she has bipolar disorder.

AG ¶ 29(b) applies. All of Applicant's treatment and her medication regime has been voluntary and of her own volition. She sought help multiple times in her life for depression when she has needed it. She sought medical assistance from Dr. L when depressed in 2010 and requested temporary medication assistance. She requested anti-anxiety medications "B" and "K", for limited use as needed, and in 2020 she requested to temporarily go back on anti-depressant "W" to deal with her grief in the loss of her dog. None of her treatment has been involuntary or legally required, she has sought it. The two medical reports she submitted in evidence give her a favorable prognosis from experienced and qualified medical and mental health professionals.

In this case, the most reliable account of Applicant's mental health history and treatment is her own testimony. For over two hours at the hearing, she was asked detailed questions on this matter in direct and cross examination, and by me. Her answers were sufficiently detailed, consistent, and logical. The testimony about the timeline of events and her explanation of the issues raised by Dr. B's report were credible and sufficient to mitigate the security concerns. Applicant's testimony contains details, context, and explanations that Dr. B's report lacks. There are no treatment records in evidence that contradict her testimony.

Applicant has provided sufficient evidence showing that she proactively seeks medical care when she needs it. More than once, on her own volition, she has obtained counseling and medication to treat feelings of depression. Her mood and symptoms are under control. She has acted in good faith in seeking treatment and terminating treatment when it was no longer needed. Applicant worked with Dr. L to change her medications and dosages to best suit her. She worked with Dr. L to wean off her medications and had successful outcomes. She restarted medication once to cope with temporary grief, and then stopped when it was no longer needed. She terminated her relationship with Dr. L after he put minimal effort into her care, and she has consistent medical care from her physician and other reliable professionals.

In this case there is insufficient evidence that her mental health condition is a risk to security. Outside of the 2020 DUI, which occurred under unusual circumstances of the COVID-19 pandemic, there is no evidence showing that Applicant has been erratic, unreliable, untrustworthy, had incidents at work or with law enforcement, or behaved in a way that was problematic. The record shows she is a high achiever and professionally focused. She has the liberty, autonomy, and right to make decisions about her health care and medical providers, and the decisions she made were reasonable and appropriate.

I give less weight to Dr. B's report than to evidence provided by the other mental-health experts. Most importantly, Dr. B failed to credibly explain why she believed her bipolar diagnosis was correct other than to make a comment about hypomania during the interview. Hypomania is supposed to last several days. Dr. B failed to provide the symptoms from the DSM 5 to support this diagnosis. The DSM 5 criteria for a Hypomanic Episode is as follows:

> A. A distinct period of abnormally and persistently elevated, expansive, or irritable mood and abnormally and persistently increased activity or energy, lasting at least 4 consecutive days and present most of the day, nearly every day.
>
> B. During the period of mood disturbance and increased energy and activity, three (or more) of the following symptoms (four if the mood is only irritable) have persisted, represent a noticeable change from usual behavior, and have been present to a significant degree:
> 1. Inflated self-esteem or grandiosity.
> 2. Decreased need for sleep (e.g., feels rested after only 3 hours of sleep).

3. More talkative than usual or pressure to keep talking.
4. Flight of ideas or subjective experience that thoughts are racing.
5. Distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli), as reported or observed.
6. Increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation.
7. Excessive involvement in activities that have a high potential for painful consequences (e.g., engaging in unrestrained buying sprees, sexual indiscretions, or foolish business investments). (DSM 5 at 124)

The evidence in the record does not support any instance where Dr. B or Dr. L met with Applicant over a consecutive four-day period, as required by the DSM 5, to find hypomania. Dr. B only met with her for 30 minutes on one day. Dr. B also did not state which of the seven criteria were established.

There was no proof that the PAI test could be used to accurately diagnose bipolar. Dr. B asked Dr. L about a diagnosis and Dr. L's response showed he did not know or was unsure, and he made an educated guess. Dr. L admitted he was unsure of an accurate diagnosis because he only was treating her symptoms. After 10 years, his failure to conduct testing or determine an accurate diagnosis is consistent with Applicant's testimony that he was only a pill doctor whom she saw infrequently. At the end of their relationship, Dr. L was literally "phoning it in" and collecting his fees.

Dr. B did not give Applicant enough credit for seeking medical care and medication to manage her depression and anxiety feelings and being involved in the management and adjustment to her medication regime. Dr. B put great emphasis on Applicant terminating her relationship with Dr. L, as if she was under the belief that their relationship was compulsory in some way, which it was not. Applicant was not under any kind of obligation to meet with Dr. L in perpetuity. The same is true for her desire to stop taking mood stabilizer "L". This case clearly differs from a circumstance where an Applicant is required care and medication by a court or has repeated instances of significant instability that warrant such interventions.

Dr. B's failure to understand when Applicant's dog died is also significant. She specifically noted Applicant's tearfulness at the interview in discussing the dog, and her report noted the death of her dog 10 years ago was a stressor in the DUI. Dr. B's clear implication is that Applicant is emotionally defective or unstable for grieving so heavily ten years later, when in fact the dog died only a few months prior to Dr. B's interview.

The report's lack of details and supporting documentation makes Dr. B's conclusions questionable, and in some instances unreasonable. Dr. B does not actually state the specific findings of the PAI testing, but indicated the findings were favorable to Applicant. She did not specifically say why the good findings should be discounted, and negative findings should not. Dr. B did not explain why she did not conduct other testing with Applicant if she thought the results of the PAI test were faulty. She did not do any testing of Applicant to support a bipolar diagnosis. Their interview was short, and her

claims of observing hypomania through a voicemail and short discussion of hobbies lacks credibility and is not in accordance with the guidelines of the DSM 5.

Dr. B's failure to use the most recent version of the DSM or apply a current DSM diagnosis is also problematic. This methodology shows she clearly was not trying to generate the most accurate report. Most of the report relies on her phone call with Dr. L, whom Applicant had not talked to for seven months, and not seen in person for about two years.

I give more weight to the medical reports and findings from Dr. P and Dr. H that Applicant submitted in the record. They provided more recent evaluations. They spent much more time interviewing her, relied on their own testing, record review, and evaluations to formulate logical conclusions. Dr. P used a test that assesses and diagnoses mental health conditions. Dr. H is a doctor with 50 years of experience seeing patients in the areas of addiction medicine and internal medicine. Their conclusions are well reasoned and logical based on the record in this case.

This case involves differing expert opinions from mental health treatment providers. The Government's evaluator only met with Applicant for 30 minutes before making her assessment. Her report contains multiple errors and omissions, and draws its conclusions and diagnoses from this information, which undermines its credibility. It also contains information that supports Applicant's testimony and contradict its findings. For these reasons, I give the January 2022 report less weight. Applicant submitted two more recent evaluations and a prognosis from a psychologist and a physician from May 2022. They each spent more time with Applicant, and their conclusions are well reasoned and credible. I find these reports to be reflective of the current circumstances, credible, and accurate, and give these two reports more weight.

The Appeal Board took up the issue of conflicting expert opinions and addressed the administrative judge's weighing of evidence in ISCR Case No. 19-00151 at 8 (App. Bd. Dec. 10, 2019):

> A Judge is required to weigh conflicting evidence and to resolve such conflicts based upon a careful evaluation of factors such as the comparative reliability, plausibility, and ultimate truthfulness of conflicting pieces of evidence. See, *e.g.*, ISCR Case No. 05-06723 at 4 (App. Bd. Nov. 4, 2007). A Judge is neither compelled to accept a DoD-required psychologist's diagnosis of an Applicant nor bound by any expert's testimony or report. Rather, the Judge had to consider the record evidence as a whole in decoding what weight to give conflicting expert opinions. See, *e.g.*, ISCR Case No. 98-0265 at 4 (App. Bd. Mar. 17, 1999) and ISCR Case No. 99-0288 at 3 (App. Bd. Sep. 18, 2000).

The psychological conditions security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered the witness testimony, character letters, and professional achievements. I have incorporated my comments under Guidelines G, J, and I in my whole-person analysis.

I had the chance to observe Applicant's demeanor and asses her credibility. She adequately explained the circumstances surrounding the SOR allegations, and I found her testimony and explanations to be credible and substantially corroborated by witness testimony and documentary evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility for a security clearance. She provided sufficient evidence to mitigate the security concerns under Guidelines G, J, and I.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Paragraph 3, Guideline I:	FOR APPLICANT
Subparagraphs 3.a-3.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Ross D. Hyams
Administrative Judge