

KEYWORD: Guideline I; Guideline E

DIGEST: Applicant challenges the Judge’s finding (contained in the Analysis portion of the Decision) that he suffered from bipolar disorder. After examining the record as a whole, we find no reason to disturb the Judge’s finding on this matter. Among other things, he cited to descriptions of Applicant’s conduct contained in the hospital admission documents—making bizarre statements, entering the homes of strangers without permission, etc. During the hearing, Applicant stated that there was no reason for hospital personnel to have made up these factual assertions and did not challenge their accuracy. Adverse decision affirmed.

CASE NO: 18-01930.a1

DATE: 12/06/2019

DATE: December 06, 2019

In Re:)	
)	
-----)	ISCR Case No. 18-01930
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Carol A. Thompson, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 17, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline I (Psychological Conditions) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 1, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant works for a Defense contractor, a job he has held since 2014. He had previous periods of employment by this same firm, beginning in 2008, and he seeks to retain a clearance he has held since that time. A college graduate, Applicant is married with two children.

Applicant regularly used marijuana from about 2010 until the end of 2013, while holding a security clearance. He stated that his father, who suffered from several emotional problems, dementia, and possibly post-traumatic stress disorder, was living with him at the time. Applicant averred that caring for his father was a great source of stress. Applicant provided inconsistent statements about his marijuana use. In response to DOHA interrogatories, he stated that he had used marijuana weekly from 2010 to 2013. However, in a period of hospitalization that occurred in 2013, to be discussed below, he stated that he had used marijuana daily in 2013. Applicant attributed these inconsistencies to memory problems that possibly had resulted from head trauma he suffered during high school athletics. There is no evidence of marijuana use after his hospitalization. Applicant signed a statement of intent to refrain from illegal drug use.

In late 2013, Applicant was voluntarily admitted to a psychiatric facility. His family advised that Applicant had “expressed suicidal ideation.” Decision at 3. The intake interview described Applicant as follows: “very grossly psychotic and delusional, disorganized, loose, incoherent, [and he made] bizarre statements.” *Id.* Applicant had been running about the streets and entering the homes of strangers without permission. The admission diagnosis was bipolar affective disorder, not otherwise specified, “currently depressed with psychosis and in acute exacerbation,” and intermittent marijuana abuse. *Id.* Applicant was prescribed medication, which stabilized his mood. His discharge diagnosis was bipolar affective disorder, not otherwise specified, “currently manic with psychosis,” and severe marijuana abuse. *Id.* Applicant continued psychiatric treatment for a while after discharge. He did not believe that his medication was necessary, and he stopped both taking his medication and seeing the psychiatrist in 2014. He noted that the psychiatrist wanted him to continue his medication, but he felt that she did not really care about him as a patient.

In early 2017, at the request of the DoD, Applicant was evaluated by a licensed clinical psychologist. This person diagnosed him with bipolar I disorder, hypomanic, and cannabis use disorder, in prolonged remission. She concluded that Applicant's prognosis was poor without complying with treatment and that he is at risk of another manic episode, during which his judgment will be severely impaired.

Applicant does not agree with this diagnosis. He has been seeing a licensed clinical social worker since mid-2018, who diagnosed him with adjustment disorder unspecified. Her report stated that Applicant showed no evidence of bipolar disorder and that he is emotionally stable. Applicant also sought his own evaluation from a psychologist and a licensed clinical psychologist, who diagnosed him with adjustment disorder unspecified. They concluded that Applicant does not exhibit a level of anxiety that rises to a clinical level.

There is no evidence of recurrence of psychotic or delusional behavior. Applicant is an active member of his church, from which he has received counseling and guidance. His wife does not believe that he is bipolar and has seen no evidence of erratic behavior.

The Judge's Analysis

The Judge entered favorable findings on an allegation that, in early 2014, Applicant had discontinued medical treatment for bipolar disorder against his doctor's advice. He stated that, without direct evidence from the doctor, he could not find that the doctor had not, albeit reluctantly, gone along with Applicant's decision to forgo treatment. However, the Judge entered adverse findings regarding Applicant's psychiatric diagnosis of bipolar disorder and his marijuana use. He cited to evidence of the behavior that Applicant exhibited prior to his 2013 hospitalization, the diagnosis of bipolar disorder given upon discharge, and the 2017 similar diagnosis by the clinical psychologist appointed by DoD. Though noting the diagnoses of adjustment disorder by Applicant's current counselor and by the two psychologists, the Judge stated that he gave greater weight to the conclusions of those who treated Applicant during his hospitalization. He stated that he was unable to reconcile the diagnoses of adjustment disorder with the description of Applicant's behavior in the hospital admission documents.

Regarding the allegation of marijuana misuse (alleged under Guideline E), the Judge acknowledged that there is no evidence of such misconduct since 2013. However, he stated that he had lingering concerns due to Applicant having chosen to violate the law, sometimes on a daily basis, while holding a security clearance. He also noted Applicant's inconsistent statements and averred that he is not convinced of the true extent of Applicant's drug misuse. The Judge cited to the requirement of the Directive that any doubts about an applicant's clearance eligibility must be resolved in favor of national security.

Discussion

Applicant challenges the Judge’s finding (contained in the Analysis portion of the Decision) that he suffered from bipolar disorder.¹ He cites to the opinions of his own therapists as well as to documentary evidence that he submitted into evidence. We examine a Judge’s findings to see if they are supported by substantial evidence, that is, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶ E3.1.32.1. *See, e.g.*, ISCR Case No. 18-01564 at 3 (App. Bd. May 30, 2019).

It is true that there is a conflict in the evidence regarding this matter. The evidence submitted by the Government includes diagnoses, both in 2013, one of which is a hospital discharge record after a week as an in-patient, and again in 2017, of bipolar disorder, while Applicant’s evidence contains diagnoses of adjustment disorder. It is a Judge’s job to resolve conflicts in the evidence. *See, e.g.*, ISCR Case No. 17-03024 at 2 (App. Bd. Sep. 6, 2019). After examining the record as a whole, we find no reason to disturb the Judge’s finding on this matter. Among other things, he cited to descriptions of Applicant’s conduct contained in the hospital admission documents—making bizarre statements, entering the homes of strangers without permission, etc. During the hearing, Applicant stated that there was no reason for hospital personnel to have made up these factual assertions and did not challenge their accuracy. Tr. at 67. The Judge’s conclusion that this conduct was consistent with the hospitalization diagnosis as well as with the later one by the DoD psychologist is supportable. We conclude that the challenged finding is based upon substantial evidence. To the extent that this argument constitutes a challenge to the relative weight that the Judge assigned to the evidence regarding Applicant’s psychiatric diagnosis, we find no reason to conclude that the Judge weighed this evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02250 at 3 (App. Bd. May 23, 2019).

Applicant argues that the Judge’s analysis is contradictory, citing to the Judge’s favorable finding on the allegation that he had stopped treatment in 2014 against his doctor’s advice. He argues that the implication of this favorable finding means that he had, in fact, continued with his treatment, and that this apparent meaning is in conflict with other statements by the Judge to the effect that Applicant’s prognosis is poor without treatment. This argument is without merit. The Judge found in Applicant’s favor regarding this allegation only because he was not satisfied that his medical provider did not, possibly reluctantly, concur with his decision to withdraw from treatment. Nowhere in the Decision does the Judge appear to assert that Applicant had, in fact, continued the treatment in 2014. Aside from this, Applicant’s challenge to the Judge’s mitigation analysis under both Guidelines amounts to a disagreement with the manner in which the Judge weighed the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.*

Applicant believes that the Judge should have considered Guideline H (Drug Involvement) mitigating conditions. Applicant’s marijuana use was alleged under Guideline E (Personal Conduct) and not under Guideline H. However, even if the Judge had amended the SOR to include Guideline

¹Applicant relies, in part, on the distinction between Bipolar I Disorder and Bipolar Affective Disorder, Not Otherwise Specified. The Judge gave the most weight to Bipolar Affective Disorder, Not Otherwise Specified.

H concerns and entered favorable findings for them, his adverse decision under Guideline E would still be supportable. His ultimate conclusion under that Guideline was that Applicant’s marijuana use while holding a clearance and his inconsistent statements left him with doubt. Applicant has not cited to a harmful error in the Judge’s mitigation analysis.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board