

KEYWORD: Guideline I

DIGEST: Applicant’s case involves not just “mental health counseling” but also includes a mental health diagnosis that he has a condition that impacts his ability, reliability, judgment, stability, and trustworthiness. The Judge did not err in his application of the Guideline I disqualifying conditions. Adverse decision affirmed.

CASENO: 15-02352.a1

DATE: 04/02/2019

DATE: April 2, 2019

In Re: ) ) ) ----- ) ISCR Case No. 15-02352 ) ) Applicant for Security Clearance ) )	
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 28, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline I (Psychological Conditions) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On January 4, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 and Analysis**

Applicant is a 59-year-old employee of a defense contractor. He retired from the military in the early 2000s. He admitted the SOR allegations with explanations. In 2009, after attempting suicide, he was committed to a hospital for observation and mental health treatment. He was discharged with the diagnosis of Major Depressive Disorder, Recurrent, Severe, with Psychotic Features.

In 2017, Applicant underwent a psychological evaluation by a licensed psychologist/clinical neuropsychologist who diagnosed him with Major Depressive Disorder, Recurrent, Severe, with Psychotic Features; and Delusional Disorder, Prosecutory Type. The psychologist concluded that Applicant’s “current mental state and functioning impacts his ability, reliability, judgment, stability and trustworthiness in handling or safeguarding classified information.” Decision at 6, quoting from Government Exhibit 3. The psychologist also noted that he agreed with Applicant’s treating psychiatrist that Applicant “is able to perform his job, and does not have a history of aggression or being fired from his place of employment.” *Id.* Applicant’s treating psychologist stated that Applicant “is a very willing and cooperative client who has an excellent prognosis.” Decision at 7, quoting from Applicant Exhibit B.

The Judge concluded that none of the mitigating conditions applied with enough force to overcome the weight of the evidence. Applicant is still subject to delusions. The Judge noted that the “excellent prognosis” came from the psychologist who is treating Applicant for anxiety issues as opposed to depressive, psychotic, and delusional mental health concerns. Decision at 11.

### **Discussion**

Applicant contends the Judge erred in his application of the mitigating conditions. He asserts his anxiety issues are being treated, notes that his psychiatrist is working to resolve his depression/delusion issues with new medication, and argues that his ability to function at work mitigates the security concerns. Such arguments amount to a disagreement with the Judge’s weighing of the evidence. A party’s disagreement with the Judge’s weighing of the evidence, or an

ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

As best we can discern, Applicant also is contending that the security clearance application states “that mental issues alone should not be use for disallowing clearances.” Appeal Brief at 1. Applicant may be referring to the provision in his security clearance application that states, “[m]ental health counseling in and of itself **is not a reason** to revoke or deny eligibility for access to classified information or for a sensitive position . . . .” Government Exhibit 1 at 24. Applicant is misinterpreting the language of the quoted provision. Applicant’s case involves not just “mental health counseling” but also includes a mental health diagnosis that he has a condition that impacts his ability, reliability, judgment, stability, and trustworthiness. The Judge did not err in his application of the Guideline I disqualifying conditions.

Applicant has not identified any harmful error likely to change the outcome of the case. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. “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.” The decision is sustainable on this record.

### Order

The Decision is **AFFIRMED**.

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

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board