

KEYWORD: Guideline I; Guideline G; Guideline E

DIGEST: During a month period in 2001, Applicant's conduct resulted in four separate fires. As a result of these fires, felony and misdemeanor charges were brought against Applicant. In October 2002, he was sentenced to 12-24 months in jail. He was released from jail in October 2003. In 2014, he completed a 12-week psycho-educational program in anger management after he was involved in an altercation at work that resulted in him being convicted of assault and battery. Adverse decision is affirmed.

CASE NO: 15-04269.a1

DATE: 01/09/2020

DATE: January 9, 2020

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In Re:	)	
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	)	
Applicant for Security Clearance	)	

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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Richard L. Morris, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 20, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline I (Psychological Conditions), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 18, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman 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 erred in finding that Applicant was diagnosed with bipolar disorder and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings on the Guideline G and

Guideline E allegations have not been raised as an issue on appeal. Consistent with the following, we affirm.

### **The Judge's Pertinent Findings of Fact**

Applicant, who is in his late 30s, has been an employee of a defense contractor since 2006. He is divorced, has a minor child, and lives with a fiancée who has two minor children. He has held a security clearance since 2009.

During a month period in 2001, Applicant's conduct resulted in four separate fires. The first incident occurred when he was heavily intoxicated. While walking to his apartment, he flicked a lighted cigarette into the bed of a parked pickup truck. This started a fire that spread and destroyed the truck and four residences. In another incident, he poured hair spray into a beer can and ignited it. A fire started in a hallway after he stumbled. The fire department was summoned to extinguish the hallway fire. As a result of these fires, felony and misdemeanor charges were brought against Applicant.

Shortly after those incidents, Applicant's father arranged for him to be evaluated by a military psychologist. Applicant told the psychologist that he had been diagnosed with attention deficient hyperactivity disorder (ADHD) and bipolar disorder for which he was prescribed medications and that he stopped taking the bipolar disorder medication because he could not drink alcohol while on it. He also told the psychologist that he had difficulty controlling his anger because of the bipolar disorder. The psychologist did not believe Applicant was forthcoming during the interview and appeared to be seeking help to present himself in a positive light in court. The psychologist diagnosed him with alcohol abuse, but not bipolar disorder. At the security clearance hearing, Applicant testified that he was never diagnosed with bipolar disorder but assumed he had that condition because he was prescribed medication for it while in college.

Following the psychological evaluation, Applicant completed an alcohol awareness program and treatment. In 2002, Applicant pled guilty to two felony and four misdemeanor counts. The two other felony counts were dismissed pursuant to a plea agreement. In October 2002, he was sentenced to 12-24 months in jail. He was released from jail in October 2003.

In about 2011 or 2012, Applicant sought psychotherapy after learning his then-wife was pregnant by her ex-husband. He experienced panic attacks and was prescribed anti-anxiety medication. Apparently because this treatment related to marital problems, he did not disclose it on his 2014 security clearance application (SCA). In 2014, he completed a 12-week psycho-educational program in anger management after he was involved in an altercation at work that resulted in him being convicted of assault and battery.

In early 2018, Applicant was evaluated by a licensed clinical psychologist at DoD's request. Regarding this evaluation, the Judge stated:

The psychologist commented that Applicant was not truthful and forthcoming during the evaluation. She noted that he denied ever having symptoms of ADHD, and that he did not disclose his treatment for anxiety in his SCA. She administered a

personality assessment inventory but found that the results were not interpretable because the validity scales indicated that he was presenting himself in an unrealistically favorable light. She reported that Applicant admitted starting only one fire and claimed that he was present at the other fires but did not start them. She reviewed his medical records, which reflected that a psychiatrist diagnosed Applicant with bipolar disorder in 2000. She also commented that Applicant's medical records reflect that he frequently admitted that he was diagnosed as bipolar. She stated her ability to make a definitive diagnosis was limited, because Applicant appeared to have withheld information about his mental health history. She concluded that Applicant "has mental, emotional, or personality conditions that could impair judgment, reliability, or trustworthiness." Her diagnosis was (1) alcohol use disorder, remission status unknown; (2) bipolar disorder, most recent episode depressed; and (3) anxiety disorder, unspecified. (GX [Government Exhibit] 4). [Decision at 4.]

Between 2017 and 2019, Applicant received psychotherapy from three medical professionals. The first therapist saw Applicant 15 times and diagnosed him with generalized anxiety disorder, post-traumatic stress disorder (PTSP), and adjustment disorder with anxiety. The second therapist saw Applicant six times and diagnosed him with generalized anxiety disorder, PTSD, and major depressive disorder, recurrent and moderate. His PTSD is attributed to trauma during his prior marriage and contentious divorce. He is now considered emotionally stable but occasionally is affected by stress and depression, mostly from co-parenting conflicts with his ex-wife. The second therapist continues to treat Applicant and noted he has no indication of an alcohol-abuse disorder and is not bipolar. In late 2018, the third therapist diagnosed him with adjustment disorder with mixed disturbance of emotions and conduct that has improved from two previous evaluations.

Company owners (which includes Applicant's father), coworkers, and friends attest to Applicant's honesty, reliability, and trustworthiness. His father stated that Applicant was never diagnosed with bipolar disorder or alcohol dependence. Applicant testified that he takes anti-anxiety medication daily and has learned to deal with stressful situations.

### **The Judge's Pertinent Analysis**

The evidence established disqualifying conditions in Directive Encl. 2, App. A ¶ 28(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 ¶ 28(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*. The therapists' testimony and documentary evidence also established mitigating conditions in ¶ 29(a), *the identified condition is readily controllable with treatment and the individual has demonstrated ongoing and consistent compliance with the treatment plan*, and ¶ 29(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 qualified mental health professional*. The favorable evidence from the therapists, however, does not overcome the unfavorable diagnosis in the DoD-requested psychological's evaluation. Moreover, "Applicant's lack of candor with the U.S. Government psychologist raises a question whether he has been candid

with his own therapists.” Decision at 10. Additionally, any doubt about the probability of recurrence must be resolved in favor of national security.

## **Discussion**

Applicant contends that the Judge erred in finding that he was diagnosed with bipolar disorder. In his arguments, he emphasizes his testimony as well as his therapist’s testimony that he was not diagnosed with that condition. He argues the DoD-requested psychologist’s evaluation is not a medical diagnosis but was a document review and relied on an alcohol-treatment intake sheet at which time he mistakenly reported he was diagnosed with bipolar disorder as a child. Applicant realized years later that he was not diagnosed with that condition. He further argues that his therapist and other witnesses testified that he does not display the symptoms of bipolar disorder.

A Judge is tasked to resolve apparent conflicts in the evidence. *See, e.g.*, ISCR Case No. 14-00281 at 4 (App. Bd. Dec. 30, 2014). In the Decision, the Judge made findings of fact and conclusions that addressed the conflicts in the evidence as to whether Applicant was diagnosed with bipolar disorder. We find no reason to disturb those findings or conclusions. As the Judge found, GX 4 reflects the DoD-requested psychologist diagnosed Applicant, in part, with “Bipolar Disorder, most recent episode depressed.” This diagnosis was based on a records review, clinical interview, and Personality Assessment Inventory (PAI). The psychologist’s report reflects Applicant told her that he was first diagnosed with bipolar disorder in prison when he was admitted to a hospital for a week for stabilization and was prescribed Depakote; furthermore, she also notes Applicant’s psychological evaluation before the criminal proceeding during which he reported being previously diagnosed with bipolar disorder and being prescribed the same medication that he discontinued taking so he could continue consuming alcohol. GX 4 at 3. The psychologist’s report further states, “A review of medical records from Dr. G . . . , the psychiatrist who diagnosed him with Bipolar Disorder,” noted the Applicant, as a high school senior, received court-ordered counseling and spent time in a detention home after the police found him making bombs. *Id.* From our review of the record, the Judge’s material findings and conclusions that Applicant was diagnosed with bipolar disorder are based on substantial evidence or constitute reasonable inference that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019).

Applicant’s brief also notes that he has voluntarily sought treatment for his mental health issues and has positively embraced his treatment plan. He argues recurrence of any condition is extremely low and, based on a whole-person analysis, he should be granted a security clearance. These arguments amount to a challenge of the Judge’s weighing of the evidence and are insufficient to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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 Ra'anan  
Michael 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