

Date: July 5, 2023

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Applicant for Security Clearance)
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ISCR Case No. 22-00822

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 20, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline I (Psychological Conditions) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 4, 2023, Defense Office of Hearings and Appeals 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.

The SOR alleged concerns stemming from Applicant’s arrest and hospitalization in early 2020 and her mental health evaluation conducted in late 2021, both of which are addressed in more detail below. The Judge found against Applicant on all concerns. On appeal, Applicant asserts that the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law, and failed to properly apply the mitigating conditions and whole-person analysis. For the following reasons, we affirm.

Judge's Findings of Fact and Analysis

Applicant is in her early 60s and holds both bachelor's and master's degrees. She has been employed in the defense industry since the late 1980s and has held a security clearance since the late 1990s.

Applicant has been engaged in mental health treatment for at least 30 years, since she was in college, which consisted of both medication management and therapy. The record contained limited information regarding the extent of Applicant's treatment before 2020.¹

In January 2020, Applicant was arrested and involuntarily hospitalized because she was "knocking on random peoples' doors attempting to gain entry," and was "threatening to 'stomp' the wife of an ex-boyfriend of hers from 40 years before and teach that person a lesson." Decision at 3. At the end of the two-week hospitalization, during which she was diagnosed with Schizoaffective Disorder, Bipolar Type, Applicant was discharged in fair condition. She testified that she had little to no memory of the incident leading to the hospitalization, that it was a "one-time thing," and that nothing like it had occurred before or after the incident. *Id.* at 3, 5.

Following her discharge, Applicant began seeing a psychiatric nurse practitioner (the "PNP") on about a monthly basis for medication management and therapy. In a statement submitted prior to the hearing, the PNP expressed that Applicant has maintained psychiatric stability on the current medication regimen and provided a working diagnosis of Post-Traumatic Stress Disorder. In a supplemental statement, the PNP expressed that Applicant's psychiatric symptoms have remained well controlled and in remission. Based on Applicant's progress over the prior two and a half years, the PNP did not believe that Applicant would experience a relapse of symptoms if she maintained medication and mental health treatment compliance.

In November 2021, Applicant was evaluated by a DoD mental health consultant (the "MHC") and again diagnosed with Schizoaffective Disorder. The MHC concluded that Applicant presents with "a significant mental health history with active indications of delusional ideation and disorganization in thinking," and that "there are considerable concerns about her judgment, reliability, and trustworthiness at this time, as well as her long-term prognosis." Decision at 4 (quoting Government Exhibit (GE) 2 at 10).

The Judge found that Applicant has suffered from severe and chronic mental health issues for decades, that the MHC found that Applicant has a condition that may impair her judgment, stability, reliability, and trustworthiness, and that Applicant was involuntarily hospitalized after engaging in violent and bizarre behavior. He concluded that disqualifying conditions AG ¶¶ 28(a), (b), and (c) applied. The Judge concurred with the MHC's concern about Applicant's "apparent inability to rationally discuss her situation and treatment in depth," noting that the majority of her responses at hearing were monosyllabic and she was unable to answer specific questions about providers predating the PNP. Decision at 8. Moreover, the PNP's statement that Applicant's symptoms are well controlled by medication was conclusory and insufficient in light of the lack

¹ Notably, although she testified at hearing that she has engaged in mental health treatment for over 30 years, Applicant disclosed no mental health counseling in the preceding seven years in her 2016 security clearance application. *See* GE 1 at 23.

of evidence regarding Applicant's progress since her hospitalization. In weighing the evidence presented by the mental health professionals, the Judge found that the PNP's favorable statements were insufficient to overcome the MHC's conclusions, which were supported by an "extensive report that discussed several issues concerning Applicant's mental health." Decision at 9.

Discussion

On appeal, Applicant contends that the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all the evidence, by applying facts that were not supported by the record evidence, and by not properly applying the mitigating conditions and Whole-Person Concept.

Challenge to Findings of Fact

Applicant first asserts that several of the Judge's factual findings are "unsupported by the record." Appeal Brief at 8. There is a difference between errors in a judge's findings of fact and errors in the conclusions drawn therefrom. Applicant's purported factual errors are more accurately challenges to the Judge's weighing of the evidence and are therefore addressed along with her other arguments.

Challenge to Diagnosis

Applicant next argues that the record is insufficient to support her diagnosis of Schizoaffective Disorder because: 1) the 2020 diagnosis was based on a deficient and flawed methodology; and 2) the 2021 diagnosis relied "exclusively" on the allegedly defective 2020 diagnosis. Appeal Brief at 9, 10. Neither of these arguments has merit.

Applicant's original diagnosis resulted during an involuntary hospitalization in 2020 after police found her "knocking on a random person's door and saying that she wanted to 'stomp' his wife." GE 3 at 1. During her admission, Applicant made strange statements and was observed to be "hyperverbal, quite disorganized with labile mood, laughing inappropriately, [and] continued to make threatening remarks to others." *Id.* It was noted that Applicant had poor insight and judgment and was confused and uncooperative. *Id.* at 2. Contrary to Applicant's assertion on appeal, her differential diagnosis at admission included Bipolar Affective Disorder with Psychosis *or* Schizoaffective Disorder, while the provider explored ruling the latter out. *Id.* During her two-week treatment, Applicant underwent physical and neurological examinations, engaged in individual and group counseling, and began psychotropic medications. *Id.* at 3-4, 5. Upon her discharge, Applicant's diagnosis of Schizoaffective Disorder, Bipolar Type was formalized. *Id.* at 5. Applicant has provided no authority, either at hearing or on appeal, for why this methodology was flawed, why the diagnosis was erroneous, or why the Judge should have discounted either.

The 2021 diagnosis followed an evaluation conducted by a licensed clinical psychologist, which considered Applicant's 2020 treatment records, a personality assessment, and a clinical interview. GE 2 at 8, 9. The personality assessment revealed "longstanding patterns of instability in mood, distortions in perception, and interpersonal issues for [Applicant]." *Id.* at 10. Applicant reported a long history of outpatient psychotherapy but could not provide details about providers

or estimated dates of treatment. *Id.* at 6. The MHC affirmed Applicant’s Schizoaffective Disorder and concluded that “there are considerable concerns about her judgment, reliability, and trustworthiness at this time, as well as her long-term prognosis.” *Id.* at 10.

Applicant contends that, despite the foregoing evidence, “the record does not have an independent basis for the diagnosis of Schizoaffective Disorder.” Appeal Brief at 10. She attempts to create a requirement on the Government to present evidence underlying a diagnosis, such as the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, in addition to evidence of the diagnosis itself. No such requirement exists. Applicant’s diagnoses were established by medical records, which were admitted into evidence without objection. *See* Tr. at 10. She had the opportunity to challenge the sufficiency of those records and diagnoses at hearing; however, aside from addressing the limited time spent with her during the 2021 evaluation interview (Tr. at 27-28), she made no such challenge.

Moreover, Applicant’s emphasis on the diagnosis is somewhat misplaced as the Guideline I concern specifically states that a “formal diagnosis of a disorder is not required for there to be a concern under this guideline.” *See* AG ¶ 27. Although the Judge identified the diagnoses in his factual findings, his Guideline I analysis does not address the diagnosis at all. Rather, the Judge focused on the duration and severity of Applicant’s mental health issues, including the circumstances surrounding her 2020 hospitalization, her inability to provide details about her lengthy treatment history, and the concerns set forth by the MHC about Applicant’s current mental health status and prognosis. We find no error in the Judge’s analysis.

Challenge to Weighing of Evidence and Application of Mitigating Conditions

As an initial matter, Applicant asserts that the Judge found that all five Guideline I mitigating factors were potentially applicable and therefore erred by not providing a specific analysis of each factor. Appeal Brief at 10. This misrepresents the language in the Judge’s decision, which simply acknowledges that the Guideline I concern *contains* five potential mitigating conditions. Decision at 8. Moreover, a judge need not discuss all the potentially applicable analytical factors set forth in the Directive, including the mitigating conditions. *See, e.g.*, ISCR Case No. 12-05512 at 3 (App. Bd. Jan. 12, 2017) (citation omitted).

The crux of Applicant’s remaining appeal argument is that the Judge failed to duly consider and give adequate weight to her favorable evidence, namely the PNP’s two statements, and consequently committed harmful error by not applying mitigating conditions AG ¶¶ 29(a) and 29(b). Appeal Brief at 11-12.

The Judge found that the Government presented substantial evidence via Applicant’s hospitalization records and the MHC evaluation to establish the SOR concerns. Decision at 8. It was then Applicant’s responsibility to present evidence in rebuttal, explanation, extenuation, or mitigation sufficient to overcome the case against her. Directive ¶ E3.1.15. Her evidence addressing the Guideline I concern consisted of two single-page statements from the PNP dated about one week before and one week after the hearing. *See* Applicant Exhibits J and L.

The opinions of two mental health professionals left the Judge with conflicting evidence, which he was required to weigh and resolve. *See, e.g.*, ISCR Case No. 05-06723 at 4 (App. Bd. Nov. 14, 2007). A judge is compelled neither to accept a DoD mental health consultant's diagnosis, nor to reject it simply because conflicting evidence exists in the record. Rather, he must consider the record evidence as a whole in deciding what weight to give the conflicting opinions. *See, e.g.*, ISCR Case No. 99-0288 at 3 (App. Bd. Sep. 18, 2000).

In discussing the potential mitigating conditions, the Judge acknowledged the PNP's statements and her representation that Applicant's symptoms are well controlled with medication. Decision at 9. Conversely, he found that the "MHC wrote an extensive report that discussed several issues concerning Applicant's mental health, in particular her history of disorganized thinking and distortions in perception." *Id.* The Judge weighed the foregoing evidence and found the former to be conclusory and, without more, insufficient to overcome the more robust information and analysis presented by the MHC. *Id.* Given the totality of the record, the Judge's acceptance of the MHC's diagnosis and prognosis is sustainable.

Applicant's arguments on appeal amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to show that the Judge weighed the psychological evaluation or any other record evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, and the record evidence is sufficient to support that the Judge's findings and conclusions are sustainable. "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board