



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 APPEAL BOARD  
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Date: June 9, 2023

In the matter of:	)	
	)	
-----	)	USN-M Case No. 23-00060-R
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Christopher Snowden, Esq.

On January 2, 2022, the Department of Defense (DoD) issued a statement of reasons (SOR) pursuant to DoD Manual 5200.02 (Apr. 3, 2017, as amended) (DoDM 5200.02) advising Applicant that her behavior and circumstances raised security concerns under Guideline I (Psychological Conditions) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017). In an undated document, Applicant submitted a reply to the SOR.

On November 16, 2022, the DoD Consolidated Adjudication Services revoked Applicant's eligibility for access to classified information, and she appealed that revocation under the provisions of DoDM 5200.02. On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum requiring that DoD civilian or military personnel whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum be provided the opportunity to pursue the hearing and appeal process set forth in DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).

As a result of Secretary Moultrie’s memo, Applicant was given the opportunity to receive the process set forth in the Directive, and she elected that process. On March 31, 2023, after conducting a 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.

On appeal, Applicant contends that the Judge improperly applied factual findings that were unsupported by the record and that he failed to properly consider all available evidence and misapplied the mitigating conditions, rendering his adverse decision arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant serves on active duty in the military. Married and divorced twice, she has two minor children. She earned an associate’s degree in 2018 and is working on a bachelor’s degree. She has submitted letters from current and former military personnel supporting reinstatement of her security clearance.

Applicant has experienced trauma and difficult circumstances. These include sexual molestation as a child by a relative, sexual exploitation as an adolescent, two abusive marriages, separation from her children while serving in the military, a suspected sexual assault while serving overseas, and insensitive racial comments by a military superior.

While serving overseas in November 2018, Applicant voluntarily sought treatment for depression and anxiety and was treated with psychotropic drugs. In the summer of 2019, she received nonjudicial punishment for a six-hour unauthorized absence. About that time, she was voluntarily admitted for three days to a psychiatric hospital for depression. During that treatment, she admitted to tying a stocking around her neck, denied it was a suicide attempt, but rather claimed it was a cry for help.

[Applicant] also disclosed . . . that she had thoughts of hanging her children so that she could “stop the cycle of pain.” (Tr. 55-60) She attributed her depression to being away from her children for two years of overseas duty and sea duty. She was diagnosed with adjustment disorder with depressed mood and major depressive disorder (MDD), single episode, moderate, by history. (GX [Government Exhibit] 5) [Decision at 3.]

Shortly thereafter, Applicant was transferred to a military medical facility in the United States where she was diagnosed with MDD and placed on limited duty. In November 2019, she returned to full duty and was later reassigned to another installation.

In October 2020, Applicant had a confrontation with her division officer. She interpreted his reference to her as the “elephant in the room” as being racial in nature. Decision at 4, citing Applicant Exhibit (AX) N. During that month, Applicant was evaluated and determined to be not psychologically fit for duty. Mental health officials recommended that she be placed on limited

duty and her security clearance be suspended. She submitted a complaint with the Inspector General that a mental health provider abused her position by retaliating against her for seeking assistance regarding her divorce. A month later, Applicant's squadron reported to the DoD Consolidation Adjudication Facility (CAF) that her security clearance was suspended. DoD CAF requested Applicant undergo a medical evaluation.

[On July 16, 2021,] Applicant was evaluated as having MDD and suspected trauma disorder secondary to childhood abuse. She was found to have a borderline personality disorder that requires a substantial amount of psychotherapy and willingness to commit to treatment. The evaluator observed that she does not have good insight into her behaviors, indicating a poor prognosis and high likelihood that she will continue to experience psychological decompensation in response to stressors. The evaluator concluded that her psychological condition suggested an impairment in her ability to properly safeguard classified information and perform sensitive duties. [Decision at 4, citing GX 5, emphasis added.]

In September 2021, Applicant was assigned to sea duty. About a month later, her commanding officer requested that she be evaluated. She was diagnosed with post-traumatic stress disorder (PTSD), found not to be psychiatrically fit for full duty, and recommended for continued outpatient treatment. In January 2022, she was referred to a physical evaluation board (PEB).

Following a physical confrontation with her sister in February 2022, Applicant locked herself in a bathroom and used a razor blade to make three horizontal lacerations on her wrist. The police had to remove the bathroom doorknob to reach her. She was hospitalized but determined to be at a low risk for suicide.

[Applicant's] long-term risk was determined to be elevated because of her chronic inability to cope with psychosocial stressors. The evaluator noted, "suicide risk level is not static and can change based on changes in psychosocial variables." Applicant was diagnosed with Other Personality Disorder (mixed narcissistic and borderline features), with PTSD and MDD by history. Medical personnel found no evidence of other clinical depression, mania, anxiety, psychosis, or other major psychiatric disorders. [Decision at 5, citing GX 6 at 4, 6.]

In October 2022, a psychiatrist diagnosed Applicant with PTSD, MDD, and borderline personality disorder. In March 2023, the PEB entered an informal finding that Applicant was unfit for duty because of PTSD. She did not accept the informal finding and requested a formal PEB hearing.

Since her hospitalization in February 2022, Applicant has been compliant with her treatment regimen, but her medical records do not reflect a favorable prognosis. While she has not engaged recently in any violent or self-destructive behavior, she has been in a controlled environment and has not been confronted with the type of stressors that contributed to her psychological problems. "She presented evidence of her progress in overcoming her psychological conditions, but not enough to overcome the security concerns." Decision at 10.

## Discussion

### Applicant's Most Recent Psychiatric Evaluation

Applicant contends that the Judge erred in his analysis of her most recent psychiatric evaluation. This evaluation was conducted by Dr. C in February 2023.

First, Applicant notes the Judge erred in finding that this evaluation was conducted in February 2022. This error, however, was harmless because it did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 19-01220 at 3 (App. Bd. Jun. 1, 2020).

Second, Applicant repeatedly highlights in her brief that Dr. C rated her low on the scales for depression, anxiety, and PTSD. Dr. C's evaluation contains the following chart and information:

#### **RATING SCALES:**

<b>DATE</b>	<b>PHQ-9 (Depression)</b>	<b>GAD7 (anxiety)</b>	<b>PCL-5 (PTSD)</b>
10/20/21	4	15	69
12/14/21	27	21	76
1/12/22	14	-	-
2/8/22	17	19	72
2/24/22	17	11	47
3/17/22	11	11	41
4/29/22	15	13	48
5/13/22	6	5	16
6/14/22	12	19	-
<b>2/21/23</b>	<b>0</b>	<b>1</b>	<b>3</b>
Key	5 = Mild 10 = Moderate 15 = Moderate to Severe 20 = Severe	5 = Mild 10 = Moderate 15 = Severe	38 + = Significant

**2/21/23 C-SSRS [Columbia-Suicide Severity Rating Scale] = 0 [AX F at 1-2.]**

Dr. C's evaluation further states that the rating scales "were all in the subclinical range which was consistent with [Applicant's] conditions being resolved or in full remission." *Id.* at 2. However, the long-term significance of these ratings was not explained. Given the fluctuation of her ratings over the 16-month period reported, we find no error in the Judge's reluctance to rely on that data.

Third, Applicant argues that the Judge failed to consider Dr. C's favorable prognosis in applying certain mitigating conditions. Specifically, she asserts:

[T]he month prior to her evaluation, her "therapist transitioned her to follow-up only as needed." This prognosis was *never* even considered by the Administrative

Judge. In fact, this prognosis doesn't even make it into the Administrative Judge's findings of fact. [Appeal Brief at 11, emphasis in original.]

\* \* \*

Dr. [C] opined that [Applicant] was fit to return to shore duties and that her PTSD and MDD were both in *remission*. Dr. [C] opined that [Applicant's] "risk to harm self or others in the near future is low" and that "she has the capacity to make medical decisions and to seek help if her condition worsens." The Administrative Judge inexplicably leaves this favorable recent prognosis from his analysis. [Appeal Brief at 12, underlined emphasis added.]

We note that Dr. C's evaluation does not contain any section or statement designated as a "prognosis." While the Directive does not define the term "prognosis," it is generally defined as "the prospect of recovery as anticipated from the usual course of disease or peculiarities of the case." See <https://merrian-webster.com/dictionary/prognosis>. In other words, a prognosis is a prediction or forecast of the likely outcome of a medical condition by a medical professional and often uses descriptive terms such as "good," "fair," "guarded," "poor," or "grave." We do not interpret the portions of Dr. C's evaluation that Applicant cites as a prognosis of the likely outcome of her diagnosed conditions. Said differently, Applicant has not established that the Judge erred in concluding that her medical records do not reflect a favorable prognosis.

Finally, regarding Dr. C's evaluation, we note the Judge correctly found that:

[Applicant] was diagnosed with PTSD and MDD, both in remission. The psychiatrist opined that she was fit for duty in a shore-based environment where she has close support from family and access to mental health care, but that she would be a risk for recurrence of symptoms if placed in a high-stress environment with limited social support. The psychiatrist recommended that she not be assigned to sea duty or unaccompanied overseas duty due to the risk of symptom recurrence. [Decision at 5.]

These findings support the Judge's key conclusion that, while Applicant has shown progress in overcoming her psychological conditions, this progress is not enough to overcome the alleged security concerns.

#### Adjudicative Desk Reference (ADR)

Applicant's brief relies upon provisions in the ADR to support her arguments. These arguments are not persuasive. DOHA judges are required to decide cases by using the Directive and Adjudicative Guidelines, not the ADR. The ADR itself states that "it is not U.S. Government policy and may not be cited as authority for denial or revocation of access" to classified information. ADR, Version 4, March 2014 at 2.

## Other Analytical Issues

Applicant contends the Judge’s “analysis is flawed to the extent that [he] found against [Applicant] solely on the basis of seeking treatment or simply having a diagnosed psychological condition.” Appeal Brief at 11. Relying on AG ¶ 27, which provides, in part, that “[n]o negative inference concerning the standards in [Guideline I] may be raised solely on the basis of mental health counseling” (emphasis added), Applicant also argues the Judge drew an impermissible, negative inference that she is “still a ‘current problem’” because she is “still using counseling.” Appeal Brief at 13. These arguments are frivolous. The Judge found that, based on Applicant’s admissions and other evidence, three disqualifying conditions were established. These are AG ¶ 28(a) “behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness . . . that may indicate an emotional, mental, or personality condition, including, but not limited, to irresponsible, violent, self-harm, suicidal . . . behaviors;” AG ¶ 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 AG ¶ 28(c) “voluntary or involuntary inpatient hospitalization[.]”

The evidence established that Applicant engaged in suicidal gestures or attempts; that she had homicidal thoughts; that her commanding officer referred her for a mental health evaluation; that a licensed psychologist diagnosed her in mid-2021 with mental health conditions that suggest an impairment of her ability to properly safeguard classified information and opined her prognosis was poor; that she was hospitalized more than once for mental health conditions; that she apparently is not currently deployable due to her mental health conditions; and that she is going through the PEB process to determine whether she is fit to remain on active duty in the military. Such evidence raises doubts about Applicant’s stability, reliability, judgment, and trustworthiness. The Judge did not draw a negative inference solely because Applicant sought mental health counseling. From our review of the record, the Judge’s material findings and conclusions of a security concern are based on substantial evidence. *See* Directive ¶ E3.1.32.1, setting forth the substantial evidence standard.

Applicant’s remaining arguments amount to a disagreement with the Judge’s weighing of the evidence. As the Board has noted in the past, 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016). In short, none of Applicant’s arguments are sufficient to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge’s analysis of the evidence contravened the requirements of the Directive. We find no reason to disturb the Judge’s conclusion that Applicant failed to meet her burden to mitigate the alleged security concerns.

## Conclusion

Applicant failed to establish that the Judge committed any harmful error or that she should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with national security.’”

*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). See also, AG ¶ 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: James F. Duffy

James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Member, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board