



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
(703) 696-4759

Date: July 3, 2025

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 23-02569</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 19, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised 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) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On April 16, 2025, Defense Office of Hearings and Appeals Administrative Judge Jennifer I. Goldstein denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged ten concerns. The first eight (SOR ¶¶ 1.a – 1.h) alleged the following chronology of mental health events: since 2015, Applicant has been treated at a VA clinic—with varying regularity—for diagnosed Depressive Disorder; in August 2017, Applicant was involuntarily hospitalized for a suicide attempt; on two other occasions in 2016 or 2017, Applicant attempted to commit suicide by overdosing on medications; in November 2017, early 2019, and again in late 2019, Applicant discontinued his prescribed psychotropic medications without the consent of his prescribing doctor; in late 2019, Applicant attempted suicide; and in early 2020,

Applicant again discontinued taking his prescribed medication without the consent of his prescribing doctor. In addition to those alleged concerns, SOR ¶ 1.i alleged that, during Applicant's treatment by a private provider from 2017 to 2021, he was diagnosed with Depressive Disorder, that the treatment provider noted recurring suicidal ideation, and that the provider recommended continued therapy upon discharge. Finally, SOR ¶ 1.j reflected the evaluation and conclusions of the DoD-contracted psychologist to whom Applicant was referred during the security clearance adjudication process. That psychologist diagnosed Applicant with Bipolar II Disorder, in remission, and Unspecified Anxiety Disorder, and she rendered a guarded prognosis "unless [he] returned to regular treatment for Bipolar II Disorder, to include pharmacotherapy and counseling."

The Judge found favorably for Applicant on the allegation relating to the DoD-ordered evaluation, but she found adversely on the other nine. The Government did not cross-appeal the Judge's favorable finding on SOR ¶ 1.j, and the Judge's findings of fact and conclusions regarding that allegation will not be discussed below.

Background and Judge's Analysis

Applicant is in his late thirties and employed by a defense contractor. He has held security clearance eligibility for 17 years. He served on active duty in the U.S. military from 2008 until 2015 and has served in the National Guard since discharge from active duty. In 2011, Applicant deployed to Afghanistan. During his deployment, Applicant was in a truck accident and suffered a head injury. Applicant reported that he was diagnosed with mild traumatic brain injury (TBI), although his medical records on this issue are conflicting. While deployed, Applicant lost friends who were killed in the line of duty.

Since Applicant's discharge from active duty in 2015, he has attempted suicide on four occasions and has been treated for depressive disorder by both government and private providers. Following his 2015 discharge, Applicant initially sought treatment with the mental health clinic on the military base, and his medical records indicate diagnoses of insomnia, depressive episodes, and migraine. In 2017, Applicant twice attempted suicide by overdosing on medications. The first attempt was in January 2017, on the anniversary of a fellow soldier's death. Applicant took 18 pills but survived the attempt. He did not tell anyone outside of his family of his attempt at the time. In June 2017, Applicant's primary care provider at the VA clinic prescribed Zoloft, an antidepressant. Within the next two months, Applicant again attempted suicide by overdose of sleeping medications, in the wake of another seizure and worsening migraines.

In July 2017, Applicant began mental health treatment with a licensed clinical social worker (EJ) associated with a private practice. EJ's treatment notes reflect that she saw Applicant for about 30 sessions over five years, with the last session occurring in February 2021, and that Applicant reported recurring suicidal ideation, noncompliance with his prescription of Zoloft, and repeated incidents of fluctuating moods. EJ diagnosed depressive disorder.

In August 2017, Applicant was involuntarily hospitalized for three days following a suicide attempt. Applicant reported that he had been taking a prescribed medication that exacerbated his sleep issues and that, sleep-deprived, he saw a picture on social media of a friend who had been killed in action. Although his recollection of events is imperfect, Applicant

acknowledged that he retrieved his firearm with the intent to shoot himself. His wife and sister intervened, and police transported him to a local hospital, where he was admitted, diagnosed with PTSD, and discharged with prescriptions of Zoloft and a sleeping medication.

Within a few months, in November 2017, Applicant stopped taking his prescribed antidepressant. In early 2019, he again stopped taking the prescribed medication. On those occasions, he informed his doctor he was not compliant with the prescribed medication, and his doctor encouraged him to continue taking it as prescribed. Applicant also reported that he sometimes would stop taking his medication on drill weekends because he was operating heavy machinery.

In September 2019, Applicant saw the psychiatrist who managed his medications. Her notes reflected, "Pt. relates he self-discontinued all psychotropic medications about x3/4 months ago. Pt. elaborates he stopped taking the medications because he felt like he was doing better and didn't need them." Government Exhibit (GE) 3 at 144. The psychiatrist again diagnosed depressive disorder, unspecified, prescribed Zoloft, and noted in the diagnostic impressions that "Pt. appears to be an unreliable historian." *Id.* at 148. The psychiatrist also "strongly discouraged [Applicant] from self-discontinuation and self-adjustment of any prescription medication." *Id.* at 148.

A few months later, in November or December 2019, Applicant chose to go off his prescribed medication for a few days, resulting in an attempted suicide. On this occasion, he ran a hose to his vehicle's exhaust system so that it dispersed carbon monoxide into the cabin of the vehicle. Applicant's wife discovered him in the driveway, and his suicide attempt was not successful.

In March or April 2020, Applicant stopped taking prescription Zoloft for about a month, again without the consent of his prescribing doctor. He testified that this was a result of the supply-chain disruption at the VA that occurred during COVID19. In February 2021, Applicant was again prescribed Zoloft. It was about this time that he apparently stopped treatment with EJ, his licensed clinical social worker, and transitioned to the VA for his mental health treatment.

Since his discharge from active duty, Applicant has relied upon the VA for medical treatment. Since 2021, Applicant has received mental health treatment at the VA as well, but he reported that it would often be six months from the time he requested an appointment to the date of the session, and frequently it would be with a new doctor. The week prior to the hearing, he visited his primary care doctor who ordered a consult on mental health. Applicant is not currently prescribed any psychotropic medications. He reported that he has not had any thoughts of self-harm in the past five years, that he has developed mechanisms to cope with stress, and that he is close to his family and extended family.

In May 2023, Applicant was evaluated for suicide risk. Medical records reflect that he "has current thoughts of engaging in suicide-related behavior" and that he explained, "[t]hey come and go, its not an every day thing, its mainly when I think too much, or remember certain things that trigger memory, things that happened in the past." *Id.* at 344.

Applicant submitted evidence of military awards, performance evaluations commending his technical expertise, and community service that includes running a suicide awareness program for the National Guard.

In her analysis, the Judge found that the Government established disqualifying conditions as follows: AG ¶¶ 28(a) and 28(c) were established by Applicant's four attempted suicides in 2017 and 2019, the suicidal ideations reflected in his medical records from EJ, and his involuntary hospitalization in 2017; AG ¶ 28(b) was established by Applicant's diagnosed anxiety and depressive disorders, as manifested in his suicide attempts and ideation; and AG ¶ 28(d) was established by Applicant's failure to consistently follow his prescribed medication treatment plan.¹

After identifying the mitigating conditions that were potentially applicable under AG ¶ 29, the Judge concluded:

None of the mitigating conditions, individually or collectively, are sufficient to mitigate Applicant's diagnoses of depression and anxiety with concomitant suicide attempts and suicidal ideations. His psychological conditions appear tied to his head injuries (potential TBI), epilepsy, and cognitive problems. While he is receiving cognitive therapy from a speech therapist, he did not present enough information to establish that his psychological problems or judgment issues are under control. Applicant has the burden of establishing evidence of mitigation and did not produce enough documentation to establish there is a low probability of recurrence. His depression and anxiety may potentially be controllable with treatment, but he has failed to show he has followed an established treatment plan. He did not offer a favorable prognosis into the record. Instead, his history of treatment from 2015 to present shows inconsistent compliance with prescribed medications. Without more evidence of a favorable prognosis or other supporting mitigation, I cannot find there is no longer a problem. Considering his long history of suicidal ideation and attempts, not enough time has passed to support full mitigation at this time.

Decision at 11.

Turning to the Whole-Person Concept, the Judge acknowledged Applicant's favorable character evidence, his reputation for technical expertise, his community service, and his support for his fellow soldiers. She concluded: "[Applicant] has dedicated his life to serving the United States and has experienced a number of life-changing events because of his willingness to serve. Unfortunately, those events have impacted his mental health and at this time, there is not enough evidence to support mitigation." *Id.* at 12.

¹ AG ¶¶ 28: (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; (c) voluntary or involuntary inpatient hospitalization; (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.

Scope of Review

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the judge committed factual or legal error.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can be arbitrary or capricious if: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 95-0600, 1996 WL 480993 at *3 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Discussion

Through counsel, Applicant contends that the Judge erred in her application of the mitigating conditions. Specifically, Applicant's counsel challenges the Judge's conclusion that Applicant failed to follow a treatment plan and that he did not present evidence of a favorable prognosis, arguing that "this conclusion is contradicted by substantial record evidence, including the Applicant's testimony and treatment history." Appeal Brief at 6. For the following reasons, we affirm the Judge's decision.

In arguing that Applicant has an established treatment plan, Applicant's counsel asserts that Applicant "has been consistently engaged in psychological treatment with [EJ] from 2015 through 2021" and that "he has been under the care of Dr. [M] at the VA from 2015 to the present." *Id.* Counsel misinterprets the record evidence. For mental health counseling, the record evidence establishes that Applicant saw EJ, a licensed clinical social worker in private practice, from 2017 through February 2021. Although he at times referenced transitioning his mental health care to the VA after leaving EJ's practice, Applicant confirmed at hearing that he had only one mental health appointment at the VA between February 2021 and the date of hearing in March 2025; that appointment was purportedly in April 2024, but Applicant could not recall the name of the provider whom he saw. Transcript (Tr.) at 108–109. Applicant did receive other health care services at the VA clinic, including routine physical health care, evaluations for TBI, and, most recently, speech therapy. In his appeal brief, Applicant's counsel refers several times to Applicant's care under Dr. M at the VA from 2015 until the present. Applicant himself testified, however, that Dr. M was a member of the speech pathology team whom he saw in 2023 and 2024 and not a mental health professional. *Id.* at 106–107. The Judge's conclusion that Applicant "has failed to show he has followed an established treatment plan" is supported by the record, and Applicant's argument to the contrary is without merit.

Applicant’s counsel also argues that, contrary to the Judge’s finding, he did offer a favorable prognosis into the record. In support of this argument, Counsel cites to Applicant’s testimony during the hearing that he is “1000 times in a better place than [he] was back then,” that his mood, emotions, and energy have been “stable and predictable for the past five years,” and that his life has undergone a “180-degree turnaround.” Appeal Brief at 6–7, citing Tr. at 49, 54–55. We are not persuaded by Counsel’s argument that this “favorable self-reported prognosis” warrants application of AG ¶ 29(b) as “a favorable prognosis by a duly qualified mental health professional.” *Id.* at 9. The remainder of Applicant’s brief amounts to a disagreement with the Judge’s weighing of the evidence. None of Counsel’s arguments, however, are sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Conclusion

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which 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). “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 in ISCR Case No. 23-02569 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Member, Appeal Board