KEYWORD: Guideline I

DIGEST: Medical records are admissible in DOHA proceedings as official records IAW Directive ¶ E3.1.20. The Judge did not err in her rulings on the admission of evidence. Applicant was not deprived of due process. The Judge's material findings are sustainable. Applicant did not rebut the presumption that the Judge considered all of the evidence. Applicant failed to demonstrate that the Judge mis-weighed the evidence. Adverse decision affirmed.

CASE NO: 09-04696.a1

DATE: 07/03/2013

DATE: July 3, 2013

In Re:	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

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 November 9, 2012, 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). Applicant requested a hearing. On April 15, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Elizabeth M. Matchinski 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 Applicant was denied due process; whether the Judge's findings were based upon substantial evidence; whether the Judge considered all of the record evidence; whether the Judge mis-weighed the evidence; and whether the Judge's overall adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Applicant works for a Defense contractor. He holds a master's degree. He previously served in the U.S. military, both as an enlisted member and as an officer. He held a secret-level clearance while in the military.

While Applicant was serving on active duty, he was hospitalized for a psychiatric disorder, due to an angry outburst he directed to an officer. Applicant was diagnosed with bipolar I disorder, although at the time he disagreed with the diagnosis and failed to take prescribed medications. He was medically retired from the military due to his psychological problems and, soon thereafter, began working for a contractor. From 2001 to 2003 Applicant received no treatment for his illness.

In 2003 Applicant had a manic episode in which he became suspicious for his own safety and the safety of his children without any rational foundation. Waiting in a parking lot for his wife to bring him a spare set of keys, he took his children into a nearby car to hide. When his wife arrived and took the children from him, Applicant began attempting to open other parked cars, setting off the alarms. Ultimately referred to the VA, Applicant left the facility and reserved a room at a hotel. He was hospitalized and prescribed various medications, including Lithium, to control his problems. Upon discharge he was stable.

In 2009, Applicant began reducing his intake of Lithium without consulting his primary care physician. He claimed to have been acting in accordance with advice from a psychiatrist. He experienced stress in his professional and personal lives, including the death of a sibling. Because of his reduced intake of Lithium, Applicant's mental health deteriorated. Later that year, his wife called the police to report bizarre behavior by Applicant. She decided to separate from Applicant. In November 2009, Applicant was found at a hotel, impersonating an FBI agent. Hospitalized, he ultimately recognized that he needed to take his prescribed medications. However, he had another incident, in which he rented a car to pick up his son at an airport and then drove to see his family, having forgotten that the car was a rental. When he returned to the dealer to pick up his own car, he became angry upon discovery that his car had been placed on hold. He crashed his car into two others in the parking lot. Arrested for criminal mischief, he was placed in jail pending bail. He attempted to escape from jail, although he now denies it.[1]

[1]*See* Government Exhibit GE 6, Medical Records, Progress Note dated January 15, 2010, summarizing Applicant's description to psychiatric clinical nurse concerning this event. Applicant stated that he attempted to escape by timing when officials opened the gate. He stated that he "went after a cop, got into a karate stance, then 4-5 people jumped me from behind and brought me down and sprayed something in my eye which I swear was tear gas!"

Applicant continued to receive treatment and took his medications, although he was hospitalized on two subsequent occasions due to low Lithium.

In 2012, Applicant underwent an evaluation by a clinical psychologist at the behest of the DoD. The psychologist opined that Applicant will probably continue to experience bipolar symptoms for the rest of his life, though they may abate in severity with age. The psychologist stated that "there is no firm reason to believe that his pattern of irregular taking of prescribed bipolar medication has changed. He will in all likelihood remain prone to periods of dysfunctionality and erratic behavior possibly compromis[ing] the responsibility with which he is entrusted." Decision at 9-10, quoting GE 11, Psychological Evaluation, dated October 22, 2012.

The Judge's Analysis

The Judge summarized her findings regarding Applicant's bizarre conduct, concluding that it raised security concerns under Guideline I. She cited specifically to the opinion of the DoD psychologist that Applicant will always remain prone to such conduct. In evaluating his case for mitigation, the Judge cited to evidence that Applicant had not been fully compliant with his prescribed treatment regimen. She also cited to the sort of things Applicant did while experiencing a manic episode, including impersonating an FBI agent, and she noted evidence that Applicant's condition is longstanding rather than temporary. In the whole-person analysis, the Judge stated that Applicant had not demonstrated a sufficient commitment to adhering to his treatment plan so as to mitigate the security concerns arising from his conduct.

Discussion

Applicant contends that he was denied due process. He claims that some of the evidence admitted against him was untrue and should have been excluded. He cites to a number of things in the record that he contends are not true. However, Applicant's argument does not demonstrate that GE 6 or any other evidence was inadmissible. Medical records are admissible in DOHA proceedings under Directive ¶ E3.1.20 (Official records or evidence compiled or created in the regular course of business). The record demonstrates that Applicant received detailed pre-hearing guidance, including his right to be represented by an attorney, his right to present evidence, and his right to object to evidence presented by the Government. Applicant did not object to any of the documents offered into evidence by Department Counsel. Having decided to represent himself, Applicant is not in a position to complain about the quality of his self-representation. *See, e.g.*, ISCR Case No. 07-09842 at 2 (App. Bd. Dec. 10, 2008). There is no reason in the record to believe that Applicant was denied the due process afforded by the Directive.

Applicant takes issue with some of the Judge's findings of fact. However, considering the record as a whole, and taking into account the voluminous and detailed contents of GE 6, we conclude that the Judge's material findings, described above, are based upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." ISCR Case No. 10-03430 at 3 (App. Bd. Sep. 19, 2011), *quoting*

Directive ¶ E3.1.32.1. Even if some of the Judge's findings were in error, they were not such as would change the outcome of the case.

Applicant cites to several pieces of evidence which, he contends, the Judge failed to consider. He states, *inter alia*, that he has been compliant with his treatment regimen since the incidents in 2009, and he cites to his testimony that he had reduced his Lithium intake on the advice of a psychiatrist. In her findings the Judge acknowledged Applicant's disagreement with some of the statements in his medical records. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-08550 at 4 (App. Bd. Mar. 20, 2012).

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Decision is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board