

DATE: September 18, 2000

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0288

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Jerome H. Silber issued a decision, dated April 26, 2000, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the following issues: (1) whether the Administrative Judge erred by relying on the evaluation and diagnosis of Applicant by a Department of Defense psychiatric consultant; and (2) whether the Administrative Judge erred by not giving more weight to Applicant's current employment history and current character references.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated October 25, 1999 to Applicant. The SOR was based on Guideline I (Emotional, Mental, and Personality Disorders) and Guideline J (Criminal Conduct).

A hearing was held on March 30, 2000. At the hearing, Department Counsel presented the testimony of a Department of Defense psychiatric consultant, and other evidence, in support of its contention that Applicant suffers from an emotional, mental, or personality disorder that raises security concerns because it causes a significant deficit in Applicant's functioning.

The Administrative Judge issued a written decision, dated April 26, 2000, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Applicant's appeal from the Judge's adverse security clearance decision.

Appeal Issues

1. Whether the Administrative Judge erred by relying on the evaluation and diagnosis of Applicant by a Department of

Defense (DoD) psychiatric consultant. The Administrative Judge concluded: (i) Applicant suffers from a mental condition (bi-polar disorder) that indicates a defect in his judgment, reliability or stability; (ii) Applicant has failed to follow appropriate medical advice by failing to take medication for his mental condition since May 1996; (iii) although Applicant's mental disorder is not currently manifested in his behavior, it probably will result in unacceptable conduct in the future at some unpredictable time; and (iv) the incidents in March 1996, June 1996, and August 1997 were the result of Applicant's mental condition rather than voluntary actions indicative of criminal conduct under Guideline J. ⁽¹⁾ The Judge relied, in part, on the opinion of a DoD psychiatric consultant in making his findings and conclusions about Applicant.

On appeal, Applicant makes several arguments that challenge the evaluation and diagnosis of him made by the DoD psychiatric consultant. Specifically, Applicant argues: (a) the DoD psychiatric consultant had a predisposition to justify his professional expertise and that of his colleagues; (b) the DoD psychiatric consultant's testimony shows he did not listen to Applicant or had difficulty understanding the information about Applicant being presented to him; (c) the DoD psychiatric consultant had no basis to say Applicant had a history of assault; (d) the DoD psychiatric consultant erred with respect to his diagnosis of bipolar disorder; (e) the DoD psychiatric consultant's evaluation is based on a report by a licensed psychologist which was excluded from evidence by a divorce court in 1998; and (f) the DoD psychiatric consultant did not refer to any positive psychological evaluations. Applicant's arguments about the DoD psychiatric consultant's evaluation and diagnosis raise the issue of whether the Administrative Judge erred by relying on them.

(a) In support of the contention that the DoD psychiatric consultant had a predisposition to justify his professional expertise and that of his colleagues, Applicant argues: (i) the DoD psychiatric consultant was more interested in validating prior documentation than clinically evaluating Applicant; (ii) the DoD psychiatric consultant's report is not an assessment of Applicant's mental health, but a "tour through professional jargon and prior evaluations of the Applicant"; and (iii) the DoD psychiatric consultant's report contains "an extreme amount of professional verbiage endeavoring to fit the Applicant into a pre-conceived, pre-convicted assessment." These arguments lack merit given the totality of the record evidence. They fail to demonstrate that it was arbitrary, capricious, or contrary to law for the Administrative Judge to rely on the DoD psychiatric consultant's diagnosis.

(b) In support of the contention that the DoD psychiatric consultant did not listen to Applicant or had difficulty understanding the information about Applicant being presented to him, Applicant argues: (i) the psychiatric consultant failed to understand who Applicant's ex-wife was despite the fact that documentation made available to the psychiatric consultant referred often to her; and (ii) the psychiatric consultant misunderstood Applicant's statements about pornography being transmitted to his father-in-law's house by satellite TV. These arguments are not frivolous.

The Administrative Judge was not compelled to accept the DoD psychiatric consultant's diagnosis of Applicant. Rather, the Judge had to consider the record evidence as a whole in deciding what weight to give to that diagnosis. *See, e.g.,* ISCR Case No. 98-0265 (March 17, 1999) at p. 4 (Administrative Judge is not bound by expert testimony; Judge's responsibility to weigh the evidence as a whole is not diminished by presence of expert opinions). When assessing the consultant's evaluation and diagnosis of Applicant, the Judge had to consider the DoD psychiatric consultant's failure to recognize the name of Applicant's ex-wife during his clinical interview of Applicant, and the consultant's misunderstanding about Applicant's statements about satellite TV.

The Judge specifically noted the DoD psychiatric consultant's misunderstanding about Applicant's reference to the satellite TV (Decision at p. 6). However, the Judge accepted the DoD psychiatric consultant's diagnosis and overall evaluation of Applicant. Considering the record as a whole, Applicant's arguments do not demonstrate it was arbitrary, capricious, or contrary to law for the Judge to accept the DoD psychiatric consultant's diagnosis. A review of the record evidence shows that the DoD psychiatric consultant did not rely solely on the satellite matter to reach his conclusion that Applicant has delusions, and gave a sufficient explanation for his diagnosis to provide a rational basis for the Judge to accept that diagnosis. *See, e.g.,* Exhibit 6; TR at 38, 48-50, 57, 75-76, 97-98, 116-121, 125-133, 141-145. The DoD psychiatric consultant's conclusion that Applicant has "an elaborate delusional system which allows him to place the responsibility for recent events on others" (Exhibit 6, last page) is supported by record evidence, including: (i) various statements by Applicant that show he blames various people (not just his wife and in-laws) for his problems and views a wide range of events as being caused, controlled, or influenced by his wife and in-laws; (ii) Exhibit 16, which describes statements Applicant made during the clinical interview/evaluation that tend to support the psychiatric consultant's

observations about Applicant's rambling narrative, convoluted explanations, and sexual preoccupations; and (iii) Exhibit 23 at pp. 2-3 (describing Applicant's "considerable difficulties in maintaining logical thought processes" and other problems with his perceptions and evaluations of people and his situation). Similarly, in light of the record as a whole, the consultant's failure to recognize the name of Applicant's ex-wife does not appear to render his evaluation and diagnosis of Applicant so flawed or unreliable as to make it unreasonable for the Judge to accept that evaluation and diagnosis. Under the substantial evidence standard (Directive, Additional Procedural Guidance, Item E3.1.32.1), the Judge's acceptance of the DoD psychiatric consultant's evaluation and diagnosis of Applicant is sustainable.

(c) Applicant also contends the DoD psychiatric consultant had no basis to say Applicant has a history of assault because there were only three assault incidents in a one-year period that were all related to Applicant's marital discord. This argument lacks merit. The fact that Applicant was involved in three separate assault incidents is sufficient to warrant the DoD psychiatric consultant's reference to a "history of assault." Applicant's argument on this point does not undercut the validity of the psychiatric consultant's diagnosis in any way.

(d) Applicant makes several arguments in support of his contention that the DoD psychiatric consultant erred with respect to his diagnosis of bipolar disorder. Applicant's arguments consist of his opinions about psychiatric matters. Those arguments fall short of demonstrating the DoD psychiatric consultant erred in making a diagnosis of bipolar disorder, or that the Administrative Judge erred by relying on that diagnosis in making his security clearance decision.

(e) Applicant contends the DoD psychiatric consultant's evaluation should not be relied on because it is based on a report by a licensed psychologist (Exhibit 16) that a state court excluded from evidence in divorce proceedings in 1998. The exclusion of that report by a state court in 1998 did not render it improper for the DoD psychiatric consultant to read that report and rely on it in making his own diagnosis of Applicant. Experience in the industrial security program shows that it is typical practice for psychiatric experts to rely on documentation and reports about applicants in addition to their own evaluations of the applicants. A decision of a state court to exclude the report from a divorce proceeding in 1998 does not prohibit the DoD psychiatric consultant's reading of that report and reliance on it in making his own diagnosis of Applicant in connection with these proceedings.

(f) Applicant contends the DoD psychiatric consultant did not refer to any positive psychological evaluations when making his evaluation and diagnosis. The existence of different diagnoses for Applicant constitutes evidence that reasonably could be deemed to be in conflict with the DoD psychiatric consultant's evaluation and diagnosis of Applicant.⁽²⁾ However, the presence of conflicting evidence does not mean it was arbitrary, capricious, or contrary to law for the Administrative Judge to accept the DoD psychiatric consultant's diagnosis of Applicant. The Judge had to consider the conflicting record evidence when weighing the DoD psychiatric consultant's diagnosis. But, the presence of such conflicting record evidence did not compel the Judge, as a matter of law, to reject the DoD psychiatric consultant's diagnosis. Given the totality of the record evidence in this case, the Judge had a sufficient basis to accept the DoD psychiatric consultant's diagnosis of Applicant.

2. Whether the Administrative Judge erred by not giving more weight to Applicant's current employment history and current character references. Applicant contends the Administrative Judge erred by not giving more weight to Applicant's current employment history and current character references. This contention fails to demonstrate the Judge erred.

The record below does not support Applicant's assertion that the Administrative Judge told Applicant and his personal representative that letters introduced as evidence would be given the same weight as testimony from the authors of the letters.

Applicant's ability to cite favorable evidence does not demonstrate the Administrative Judge erred. There is a rebuttable presumption that a Judge considered all the record evidence unless the Judge specifically states otherwise, and a Judge is not required to discuss every piece of evidence. *See, e.g.*, ISCR Case No. 98-0247 (January 20, 1999) at p. 2. The favorable evidence cited by Applicant about his current work history, church activities, and community work does not demonstrate the Judge acted in a manner that is arbitrary, capricious, or contrary to law. The Judge had to consider the record evidence, both favorable and unfavorable, and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. *See, e.g.*, ISCR Case No. 99-0473 (May 12, 2000) at p. 4. Applicant's arguments do not persuade

the Board that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. Furthermore, the favorable evidence cited by Applicant did not compel the Judge to reject the diagnosis made by the DoD psychiatric consultant.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's April 26, 2000 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

1. The Administrative Judge entered formal findings in favor of Applicant with respect to Guideline J based on his conclusion that the three incidents alleged under Guideline J were the result of Applicant's mental condition, not voluntary acts of criminal conduct. Those favorable formal findings are not at issue on appeal.
2. The significance of Applicant's argument is reduced by the fact that the DoD psychiatric consultant gave some testimony that addressed the difference between his diagnosis of Applicant and some of the earlier evaluations of Applicant.