



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
 ---) ISCR Case No. 17-04325
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: Allison R. Weber, Esquire

10/02/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding psychological conditions. Eligibility for a security clearance is granted.

Statement of the Case

On December 11, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On January 24, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines (AG)* (December 10, 2016), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline I (Psychological Conditions), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated February 20, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 13, 2018. The case was assigned to me on January 10, 2019. A Notice of Hearing was issued on March 13, 2019. I convened the hearing as scheduled on April 2, 2019.

During the hearing, Government exhibits (GE) 1 through GE 7, and Applicant exhibits (AE) A through AE E were admitted into evidence without objection. Applicant and four witnesses testified. The transcript (Tr.) was received on April 11, 2019. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted several documents which were marked and admitted as AE F through AE Z without objection. The record closed on June 3, 2019.

Findings of Fact

In his Answer to the SOR, Applicant partially admitted, with comments, three of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.c.). He denied the remaining allegations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a defense contractor. He has been serving as a maintenance control lead with his current employer since February 2010. He previously served as a product handler with a chemical company from March 2008 until February 2010. He is a 1996 high school graduate, with some college credits, but no degree. Appellant enlisted in the U.S. Air Force in October 2001, and he served on active duty until August 2007, when he was honorably discharged as an airman 1st class (E-3). Several months before his discharge, Applicant was disciplined by Article 15, Uniform Code of Military Justice (UCMJ) for violating a no-contact order with his estranged wife, and he was reduced in grade from senior airman (E-4). (AE A; GE 2, at 15-19) Applicant was married in 2001, and divorced in 2008. He remarried in 2008. He has two children, born in 2004 and 2016. He was granted a top secret clearance in 2003.

Military Awards and Decorations

During his military career, Appellant received the Air Force Achievement Medal, Air Force Good Conduct Medal, the National Defense Service Medal, the Global War on Terrorism Service Medal, the Air Force Longevity Service Award; the Air Force Training Ribbon, and the Air Force Outstanding Unit Award. (AE A (Certificate of Release or Discharge from Active Duty (DD Form 214)) He was also the recipient of numerous letters

of appreciation issued by his commanders during the period 2003 to 2006. He was repeatedly recognized as the staff professional of his squadron and group. (AE C)

Psychological Conditions

In April 2003, Applicant was diagnosed by the flight commander of the Life Skills Support Center (LSSC) – a member of the Biomedical Sciences Corps (BSC) – as having an adjustment disorder with mixed anxiety and depressed mood, in part because of marital issues involving his wife's \$200 bar bill and a traumatic incident, described by his wife as an assault upon her by an instructor during a business trip. Applicant was referred to a family practice physician, and prescribed Xanax, a sedative used to treat anxiety and panic disorder. His case was closed on April 14, 2003, with no follow-up required. (GE 5 (Medical Records), at 25-30)

During 2004, Applicant and his pregnant wife were in the midst of marital discord and hostility, which eventually erupted into an ugly divorce and continuing child custody battles involving the police, the courts, the command, and military medical personnel. On May 12, 2004, Applicant started experiencing panic attacks, blurred vision, and dizziness, so he sought emergency medical assistance. He was diagnosed with panic attack and administered a low dose of Temazepam – used to treat anxiety and insomnia. He was released. (GE 6 (Medical Records), at 79-90)

The following day, Applicant voluntarily went to the Life Skills Support Clinic at the base, where he was diagnosed by another LSSC flight commander as having Axis I: panic disorder without agoraphobia (fear of places and situations), and V61.1 problems with social environment – partner relationship problem, and he was scheduled for inquiry and counseling for marital conflict. He was prescribed Paxil and Ativan as needed – both antidepressant medications approved for the treatment of anxiety. (GE 5, at 19-24) On May 19, 2004, after a 45-minute interview for marital and partner problems, unspecified, he was again diagnosed with the same Axis I disorders, and he was again released. He was seen again for the same issues on June 2, 2004 (for 50 minutes); June 15, 2004 (for 35 minutes); and again on July 6, 2004 (for 35 minutes), and was released without limitations. The July 6th diagnosis noted that the Axis I panic disorder without agoraphobia was improved. Applicant needed no further follow up and the case was closed. (GE 5, at 15-18; GE 6, at 109-113)

There is one medical record in evidence that is inaccurate. It states that an incident occurred on November 28, 2004, when Applicant was 28 years old (that encounter and record could not have taken place in 2004, because Applicant was only 26-years old on that date). On that date, Applicant's 1st sergeant supposedly referred him to the chief, social work services, a licensed clinical social worker, because of allegations that Applicant had threatened to kill his wife and daughter, as well as kill himself. Applicant denied the allegations, and noted that he and his wife were separated, and she was having an affair with a former friend. When he reported the situation to his commander, the commander issued a no-contact order against him. However, no such order was issued in 2004. A No Contact Order was issued against Applicant on February 13, 2007, and again on April 30, 2007. (AE Y) Regardless of the date in issue, Applicant denied any

suicidal or homicidal ideations. Despite the nature of the allegations, no immediate follow-up was ordered in the record, and Applicant was released. (GE 5, at 13)

On November 29, 2006, a command-directed evaluation was ordered, and Applicant went to the Mental Health Clinic. He was reportedly evaluated on that date and on December 1, 2006, when he was seen for 45 minutes regarding the adjustment disorder issues. Although Applicant denied any suicidal or homicidal ideations, “given incongruent corroborating information, he was determined to be at significant risk of potential suicidal and/or homicidal action.” The “incongruent corroborating information” was not described or identified. The licensed clinical psychologist and the life skills element chief concluded that Applicant “reflected delusions of persecution but no hallucinations.” The specifics of the “delusions” were not described or identified. They reported a diagnosis of Axis I: 300.01, V61.1, as well as rule out delusional disorder, persecutory type – an illness characterized by at least one month of delusions but no other psychotic symptoms. His Global Assessment of Functioning (GAF) Scale was 50, lowered to 45: serious symptoms. (GE 5, at 9-12) At some point, Applicant was prescribed Effexor – used to treat depression, generalized anxiety disorder, and panic disorder. Applicant chose to not attend a follow-up appointment with the licensed clinical psychologist. (GE 5, at 8) On December 19-20, 2006, he was again seen by the clinical social worker regarding administrative purposes. (GE 6, at 75-89)

On February 26, 2007, Applicant presented himself at the clinic to be evaluated for allegedly making statements regarding killing his wife and child, comments he denied making, in anticipation of appearing in court the following day. Despite displaying no psychotic signs or paranoia, and denying any suicidal intent or plan, and having intact judgment, it was determined that he was “a moderate risk to self and/or others based upon the apparent discrepancy in reports and history even though he currently denies [suicidal ideation/homicidal ideation],” and he was diagnosed as follows: Axis I: V61.12 physical abuse of adult. The previous disorder 300.01 was not mentioned. The specifics of the “apparent discrepancy in reports and history” as well as the basis for the V61.12 diagnosis were not described or identified. Despite the moderate risk that Applicant supposedly displayed, he was not scheduled to be seen in a follow up for another week. (GE 5, at 7)

On March 23, 2007, Applicant was seen in the Family Advocacy Center for a follow-up appointment. He reported that he had been disciplined and deemed ineligible for reenlistment, and was scheduled to separate from active duty in August 2007. Apparently despondent over the entire turn of events, he said that the Air Force had failed him and he no longer had any use for it. He also said that “hitting a woman or child is intolerable.” (GE 5, at 5) The record reports that in a previous visit, without specifying the date of that visit, Applicant said that “this uniform and his daughter keep him from harming his wife and her alleged boyfriend.” A report of such comments does not appear in any of the medical records submitted to me. Upon being questioned by the family advocacy officer, Applicant reportedly made several comments about his past as a member of the Italian mafia, harming various individuals and intimidating others, but he later disputed that scenario, claiming that he was merely discussing a television show, *The Sopranos*, and song lyrics. (Tr. at 91-94, 115-116) When asked if he wanted to harm his wife and

her alleged boyfriend, he responded that if he wanted to do so, “they’d be gone already.” He was diagnosed as follows: Axis I: V61.12 perpetrator of spouse abuse, and Axis II: 301.81 narcissistic personality disorder, meets criteria 1 (grandiose sense of self-importance), 2 (preoccupied with fantasies), 5 (sense of entitlement), 7 (lacks empathy), and 9 (shows arrogant, haughty behaviors or attitudes). (GE 5, at 6; *Diagnostic and Statistical Manual of Disorders, 4th Edition – Text Revision* (DSM-IV-TR), at 717) The previous disorder 300.01 was not mentioned. There is no explanation regarding the basis of the source of the diagnosis “perpetrator of spouse abuse,” or the conclusions pertaining to the criteria supporting the Axis II disorder. Despite the comments made, Applicant was not deemed to be suicidal or homicidal, and the risk remained moderate. He was scheduled to return in two weeks for a risk assessment.

Thereafter, on three different occasions in April 2007, May 2007, and August 2007, Applicant was reportedly seen by the same licensed clinical psychologist. The same diagnoses were carried over without any new evaluations. The April 2007 mental health record indicated that a Treatment Team Meeting (TTM) was conducted, and that a full Family Advocacy (FA) report was attached. No such report was in the file. (GE 5, at 4) During the May 2007 session, one week before Applicant was scheduled to commence his terminal leave (May 11, 2007), Applicant stated that during his last session with a particular provider, he “finally talked about his real issues.” There is no medical record in evidence to reflect that particular session. No diagnostic changes were made. (GE 5, at 2-3) Although there was no session conducted thereafter, there is a Mental Health Record made by the licensed clinical psychologist that the record was being closed. That record contains the following statement: “the impact of the treatment of military was administratively discharged from active duty service based on the results of the [Command Directed Evaluation] and diagnosis of personality disorder.” (GE 5, at 1) That characterization is patently false, and without any basis in fact, and the source of the comment is not known. Separation action was never initiated, and the Separation Code on Applicant’s DD Form 214 was expiration of term of service, and his Reentry Code was serving suspended punishment to Art. 15. (AE A; Tr. at 99-100)

Despite a plethora of clinical notes and session reports, none of the Air Force healthcare providers who interviewed, evaluated, diagnosed, or treated Applicant actually performed a mental health evaluation as described in DOD Instruction (DODI) 6490.4, *Requirements for Mental Health Evaluations of Members of the Armed Forces* (August 28, 1997); DOD Instruction 6490.1, *Mental Health Evaluations of Members of the Armed Forces* (October 1, 1997); or The American Psychiatric Association (APA) *Practice Guideline for the Psychiatric Evaluation of Adults*, 2nd Edition (June 2006). A mental health evaluation under DODI 6490.4 shall consist of, at a minimum:

A clinical interview and mental status examination and may include, additionally: a review of medical records; a review of other records, such as the Service personnel record; information forwarded by the Service member’s commanding officer; psychological testing; physical examination; and laboratory and/or other specialized testing. **Interviews conducted by the Family Advocacy Program . . . are not considered mental health**

**evaluations for the purpose of [DODI 6490.1 . . . and [DODI 6490.4].
(Emphasis supplied) (DODI 6490.4, Enc. 2, § E2.1.6)**

There are the repeated presence of terms such as suicidal ideation, homicidal ideation, and depression in the clinical records, but not one of the clinical records in evidence indicates that any psychological testing was administered. There is no mention of the Minnesota Multiphasic Personality Inventory, 2nd revised version (MMPI-2), used for measuring adult psychopathology; the Columbia Suicide Severity Rating Scale (C-SSRS) to gather lifetime history of suicidality as well as any recent suicidal ideation or behavior; the Personality Assessment Inventory (PAI) to assess emotional and personality functioning; the Behavior and Symptom Identification Scale - 24 (BASIS – 24) to assess the outcome of mental health or substance abuse treatment from the client's perspective; the Millon Clinical Multiaxial Inventory, 3rd Edition (MCMI-III) to measure 24 personality disorders in assisting clinicians in psychiatric diagnoses, developing a treatment approach, and guiding treatment decisions; the Patient Health Questionnaire (PHQ-2) to screen, diagnose, monitor, and measure the severity of depression; the Patient Health Questionnaire (PHQ-9) to screen, diagnose, monitor, and measure the severity of depression; the Screening for Generalized Anxiety Disorder - 2 (GAD - 2), to screen generalized anxiety; or the Screening for Generalized Anxiety Disorder - 7 (GAD - 7) to screen generalized anxiety.

Moreover, while there are several diagnoses, the clinicians failed to indicate why or how those impressions were specifically reached. Applicant repeatedly denied suicidal ideations despite constant probing about his reported disorders. He felt that he was wrongfully suspected of having suicidal ideations or homicidal ideations, as well as what he considered false allegations against him by his wife and her boyfriend, and he was disappointed that the Air Force had failed him in summarily believing the worst about him, and disciplining him. At that point, he simply quit and started discussing the Italian mafia, a television show, and some song lyrics. His position was seen as *reluctance*, sometimes referred to as *resistance*, and was considered unacceptable, and it was not otherwise examined or analyzed by the clinicians, although such an action is acknowledged in psychoanalysis.

Sigmund Freud defined *resistance* as “whatever interrupts the progress of analytic work,” such as being late, missing a session, “holding back” your thoughts in the moment (i.e., refusing to speak about them) or avoiding a particular issue. In its most simple and practical sense, *resistance* results from fear. On the other hand, Jacques Lacan, a French psychoanalyst and psychiatrist, warned not to confuse *resistance* with *defense* and formulated the famous statement that “there is no other resistance to analysis than that of the analyst himself.” In other words, if the psychotherapist makes interpretations or interventions that are clinically inaccurate, the client will get defensive, and that will interrupt the therapeutic work. In plain English, this means that a client will only explore therapeutic material so far as is comfortable in the moment; the psychotherapist, therefore, must always be aware of just how far the client is willing to go and not “push” the client beyond these temporary limits. Imprudent attempts to push a client can end up pushing the client right out of psychotherapy, which seems to be the reason why Applicant chose not to fully participate in it. (<http://www.guidetopsychology.com/btypes.htm>, citing

Sigmund Freud, *The Interpretation of Dreams* (Second Part), in Vol. V, *The standard edition of the complete psychological works of Sigmund Freud* (1953), at p. 517; Jacques Lacan, “*The Freudian thing, or the meaning of the return to Freud in psychoanalysis.*” In *Écrits: A selection*, trans. Alan Sheridan (1977), at p. 129; Jacques Lacan, “*The direction of the treatment and the principles of its power.*” In *Écrits: A selection*, trans. Alan Sheridan (1977), at p. 235.)

As noted above, Applicant’s relationship with his wife eventually erupted into an ugly divorce and continuing child custody battles involving the police, the courts, the command, and military medical personnel. His wife started filing actions against him shortly before she filed for divorce. First there were allegations that Applicant had threatened her and their daughter as well as a report that Applicant had threatened his wife’s boyfriend, both of which severely limited Applicant’s access to his daughter, and resulted in the issuance of protective orders against Applicant, as well as his being diagnosed for physical abuse of an adult. There are no statements from either Applicant’s wife or her boyfriend in evidence to support any of those actions. The Military Protective Order cites as the sole basis for the issuance of the order that Applicant’s wife “is concerned for her safety and [Applicant has] shown behavior that could be interpreted as threatening.” (AE Y). Applicant was subsequently disciplined and reduced in grade for reportedly violating the no-contact orders, despite his assertions that her allegations were baseless. Without substantially more information, there is nothing upon which to interpret threatening behavior, or violations. Likewise, there is no information, statement, or police report to support the basis for the issuance of no-contact orders, temporary injunctions, or the disciplinary punishment.

During 2006 and 2007, there were a number of temporary injunctions for protection against domestic violence with minor children filed against Applicant (AE H; AE J; AE L), as well as an attempt to acquire child custody (AE I); and motions for extensions of injunction from protection against domestic violence. (AE K; AE Q) Applicant had to file a motion for contempt and imposition of sanctions against his wife in 2007, because she refused to comply with his child visitation rights. (AE P) The Final Judgment of Divorce was entered January 16, 2008. (AE G) Applicant’s ex-wife filed three motions for civil contempt against Applicant in 2012, but all of them were denied, including one for a late payment of \$5.25 as part of a check that she refused to accept. (AE W) She also claimed that Applicant had sexually abused their daughter in 2012, but that charge was subsequently dropped.

On October 2, 2012, on January 23, 2013, and again on March 20, 2013, Applicant attended a Deprivation Hearing, based on a complaint filed on behalf of Applicant’s ex-wife. During that hearing, Applicant’s ex-wife testified that before their divorce, Applicant purchased a handgun and threatened to shoot her with it and take their daughter away. She reported the threat and the military took his weapon away. When he did it a second time, another handgun was taken from him, and under the local Baker Act – an existing law that provides for temporary institutionalization of individuals who meet certain criteria. It can only be used by specific authorized persons, including judges, mental health professionals, law enforcement personnel, and doctors. More importantly, the law is limited by the fact that those officials must have sound evidence suggesting that the

individual might meet the Act's definition for mental illness. In addition, he must pose a risk of harm to himself or others – or demonstrate self-neglect. It should be noted that the statutory criteria require more than mere suspicion of mental illness or potential risk. The statute specifically calls for “substantial” evidence, which is much higher bar than simple suspicion. As a result, people cannot be involuntarily institutionalized simply because they're acting strangely, refuse to seek psychiatric examinations, or have occasional mood swings or outbursts.

Applicant's ex-wife described their daughter as always crying before, during, and after her interactions with Applicant. However, the *guardian ad litem* expressed that she had no concerns about the child being around Applicant or his weapons. Nevertheless, Applicant's ex-wife argued that Applicant should be disqualified from possessing a concealed weapon because he had been in a mental hospital. (AE W) The matter was finally dropped, and Applicant was, once again, granted full visitation rights.

In 2017, the DOD CAF referred Applicant for a psychological evaluation. He was interviewed for an unspecified period and administered only one psychological test: the PAI, but the results of that test were deemed invalid. In a psychological report, dated November 21, 2017, that clinician noted that she had reviewed “the medical record,” without identifying any of the specific documents, and she discounted several of Applicant's comments as being at odds with information that was in the unidentified materials furnished to her by the DOD CAF: that he has a history of hospitalization for suicidal and homicidal ideation; that he had been discharged due to the results of a command directed evaluation and diagnosis of personality disorder; that a review of medical records indicates scenarios involving threats to his ex-wife's boyfriend; that Applicant's denials regarding threats of violence to his ex-wife and her now-husband are inconsistent with the accounts of events in the records furnished; that Applicant's denials of any history of suicidal or homicidal ideation are refuted by the records to the contrary; that he denied other events that are noted within the record; that he tends to portray himself as being exceptionally free of common shortcomings to which most individuals will admit; and that Applicant's comments regarding disputed information is considered to be of questionable validity. (GE 3) The psychologist concluded:

Applicant has a documented history of narcissistic personality disorder, but interestingly also shows some of the atypical thinking (unusual beliefs, paranoia), odd speech, and social skill deficits (lack of close friends, social awkwardness) commonly seen in an individual with schizotypal personality disorder.

The diagnosis in this case would render the patient in need of consistent treatment (until symptoms remit, which is uncommon with diagnosis of this nature), but this has clearly not occurred at this point. My prognosis is poor, given the ingrained nature of his issues and poor likelihood for treatment compliance. His psychological symptoms could certainly impede his judgment. . . Based upon his legal history, volatile mood and behaviors, and his history of interpersonal conflicts, it appears that [Applicant] is likely to have impaired reliability. (GE 3)

Because of the lack of specificity in the psychological report, especially when it comes to source documentation upon which Applicant's comments were not accepted, as well as to the source documentation or other information upon which the psychologist relied to find the presence of unusual beliefs, paranoia, odd speech, and social skill deficits (lack of close friends, social awkwardness), and the absence of psychological testing, it is unclear if the psychologist complied with the requirements of DODI 6490.4, *Mental Health Evaluations of Members of the Military Services* (March 4, 2013); DOD Instruction 6490.1, *Mental Health Evaluations of Members of the Armed Forces* (October 1, 1997); or even the *APA Practice Guidelines for the Psychiatric Evaluation of Adults* – 3rd Edition (2016). In this regard, while Applicant is not currently a member of the military services, it remains unclear if the DODIs have been adopted for DOD CAF purposes with respect to government contractors. Accordingly, the thoroughness and accuracy of the evaluation report remain open to question.

Work Performance and Character References

The former officer-in charge of the unit where Applicant served between October 2004 and July 2006, stated that Applicant displayed exceptional positive characteristics in duty performance, leadership qualities and in his personal life. His dedication to the mission was always exhibited through outstanding performance. He volunteered for several events. Off duty, Applicant attended church and played softball for his church team. Applicant was one of his hardest-working, knowledgeable troops that he would not only want working in his section, but one day running it. (AE B)

The former operations officer of the squadron considered Applicant to be a critical member of the unit whose performance was never less than exceptional. Applicant's duty performance, military bearing, and professionalism were of the highest level. Not only was he skilled in his primary duties, but he continuously sought additional workload to ease the burden on fellow colleagues. He would, without hesitation, bank on Applicant's ability to accomplish any task presented to him. (AE B)

The former superintendent of the maintenance operations flight described Applicant's professionalism, military bearing and duty performance to be of the highest level. He supported the squadron booster club by donating his time to help raise funds for the squadron's holiday party and other activities, and was an avid supporter of the local community, helping to build homes for Habitat for Humanity. (AE B)

Current coworkers, including the president of the local union, have described him in stressful and complicated situations requiring high levels of patience, intelligence, and understanding, and Applicant met every challenge, deadline, and goal presented and tackled every problem with grace and ease. Many of Applicant's solutions were insightful and practical, and he showed a remarkable capacity for breaking large issues into manageable segments. Applicant is also a cooperative and attentive team player. His actions consistently inspired and motivated other employees in the office. Applicant was instrumental in assisting members who are out of work, as well as assisting those affected by a hurricane. He has always been honest and forthcoming. (AE B)

One character witness met Applicant in 2002 when the witness was newly stationed at the same base. Applicant opened his home to the new arrival and invited him to the house for the 4th of July celebrations. He noted that Applicant was always receiving awards because he was a top airman. Applicant was always willing to give his shirt off his back for people. He never saw Applicant become angry or enraged. As time went on, the witness and Applicant and his wife did many things together, and Applicant's relationship with his wife seemed normal. Things changed when Applicant's wife started dating another individual who was residing in their home. It was the witness's impression that Applicant's wife would "cry wolf" and be vengeful. At one point, while the witness was residing in Applicant's house, Applicant's wife lied when she said that the witness had cornered her in the kitchen – something that never happened – so he immediately moved out of the house. Applicant's wife's boyfriend kept threatening Applicant for years, saying that he was going to "kick his butt." As Applicant's marital situation became more antagonistic, it was the witness's impression that the unit leadership was supportive of Applicant, but the Command was simply trying to cover themselves by following protocol. The witness has never seen Applicant display any suicidal or homicidal ideation. He believes Applicant is trustworthy and has integrity. (Tr. at 22-20)

One character witness has known Applicant since they were in the same military unit. After Applicant relocated, they met one day at a local store, and Applicant told him about an employment opening, and they have been with the same employer since November 2010. Before joining the same organization, the witness served as a police officer. The witness was aware of Applicant's marital situation, hearing about it from other people, and seeing Applicant's reactions. There were threats, legal action, unnecessary legal action, and going after money by the ex-wife and her now husband. He has never seen Applicant lose his temper or act irrationally. Applicant has come to his aid and helped move the witness's mother. About 12 or 13 years ago, the Command issued a be-on-the-lookout (BOLO) flyer on Applicant. Applicant's reputation as a coworker is spectacular. (Tr. at 34-47; AE B)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The standard that must be met is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that granting the person access to classified information is clearly consistent with the interests of national security.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision. The concept recognizes that we should view a person by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations should err, if they must, on the side of denials. (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

At the outset, I note I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his explanations regarding his psychological conditions issues are consistent and have the solid resonance of truth.

Upon consideration of all the facts in evidence, including those in the DOD CAF case file, those submitted by Applicant, and his testimony, and the testimony of others, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline I, Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns under 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; and
- (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.

In 2006, Applicant's wife and her boyfriend made allegations to the police and the Command that Applicant had threatened to kill them and Applicant's daughter, as well as kill himself. No-contact orders were issued to Applicant by the Command; he was directed to undergo a mental health evaluation; it was determined that Applicant was at significant risk of potential suicidal and/or homicidal action; it was later determined that he was a moderate risk to self and/or others; he was reported to be in violation of the no-contact orders; he was disciplined and reduced in grade; and he was diagnosed as a perpetrator of spouse abuse, as well as a narcissistic personality disorder. In 2012, Applicant's ex-wife accused him of sexually abusing their daughter.

In 2017, at the direction of the DOD CAF, Applicant was evaluated by a licensed clinical psychologist. She determined that Applicant has a documented history of narcissistic personality disorder, but also shows some of the atypical thinking such as unusual beliefs, and paranoia, odd speech, and social skill deficits such as a lack of close friends, and social awkwardness commonly seen in an individual with schizotypal personality disorder. She added:

the diagnosis in this case would render the patient in need of consistent treatment (until symptoms remit, which is uncommon with diagnosis of this nature), but this has clearly not occurred at this point. My prognosis is poor, given the ingrained nature of his issues and poor likelihood for treatment compliance. His psychological symptoms could certainly impede his judgment. . . Based upon his legal history, volatile mood and behaviors, and his history of interpersonal conflicts, it appears that [Applicant] is likely to have impaired reliability.

Based solely on the facts briefly referred to above, AG ¶¶ 28(a), 28(b), and 28(c) have been established. AG ¶ 28(d) has not been established because, while there may be evidence of a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, there is little, if any, evidence to reflect any failure to follow a prescribed treatment plan related to the diagnosed condition(s) other than Applicant's decision not to attend some recommended family counseling sessions over a decade ago.

The guideline also includes examples of conditions that could mitigate security concerns arising from psychological conditions under AG ¶ 29:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

The complete record reflects that before Applicant and his first wife went through marital discord, and for a period thereafter, he had a stellar military record; he was highly thought of by his Command and his units; his superiors and coworkers praised his duty performance, military bearing, professionalism, community-service activities; he received recognition for his performance; and he had an excellent reputation for honesty, integrity, and trustworthiness. Character references saw no evidence of any suicidal or homicidal ideations, and never saw Applicant lose his temper or act irrationally. Applicant's

reputation and background were summarily cast aside when allegations of misconduct arose.

Divorce and child custody disputes have been routinely known to become ugly and hostile, and the situation reported in this instance is not shocking or unusual, for it merely suggests a planned road map to success by one litigant against the other. One shocking or unusual feature in this case is the robotic manner in which there does not seem to be any analysis or investigation by the police or Command authorities to determine the truth of the allegations, explore the possible motivations for the allegations, or consider Applicant's repeated denials regarding those allegations, especially when he had a sterling reputation for honesty, integrity, and trustworthiness. No one in authority ever examined Applicant's ex-wife's allegations of an assault by an instructor while on a business trip; the alleged incident in the kitchen when she claimed she was cornered by a tenant; or her allegations of assault on their daughter in 2012. Perhaps they could have connected the dots between those allegations and the ones against Applicant.

As noted above, the only documented evidence of one of those allegations appears in the Military Protective Order which cites as the sole basis for the issuance of the order that Applicant's wife "is concerned for her safety and [Applicant has] shown behavior that could be interpreted as threatening." The exact statement was not recorded; there is no evidence that it was under oath; there is no evidence of an investigation into the truth of the allegations; it is unclear what the specific concerns of the wife were; and it is also unclear who made the interpretation that what was reportedly said was threatening. Despite unit reservations regarding the allegations, and Applicant's repeated denials, the initial steps to destroying Applicant's military career had begun. The local Baker Act – something now commonly referred to as the Red Flag Law – was applied, without due process, forcing Applicant to turn in his weapons, based solely on his wife's allegations; he was disciplined and reduced in grade for reportedly violating the no-contact orders, based on additional allegations by his wife; he was ordered to undergo a command directed mental health evaluation; and he was required to attend Family Advocacy Program and LSSC sessions.

Far more disturbing than the robotic manner in which certain actions were taken by the police and Command authorities, were the somewhat superficial and unexplained actions taken by the mental health providers within the military system, most of which cannot be considered mental health evaluations under DODI 6490.1, or DODI 6490.4. Applicant initially went through a number of interview sessions, generally consisting of between 35 and 50 minutes each, after which he was prescribed medications for depression, anxiety, panic disorder, and insomnia.

On November 29, 2006, and December 1, 2006, after being seen for merely 45 minutes, with no evidence of any psychological testing administered to Applicant, it was determined that he was "at significant risk of potential suicidal and/or homicidal action." Applicant's denials were disregarded because of "incongruent corroborating information," not otherwise identified or described. Additionally, the life skills element chief concluded that Applicant "reflected delusions of persecution but no hallucinations." The specifics of those delusions were not described or identified. It is interesting that, despite significant

risk of potential suicidal and/or homicidal action, Applicant was not involuntarily hospitalized. Perhaps it was because those conditions were not as reported.

On February 26, 2007, again without being administered any psychological tests, based on the “apparent discrepancy in reports and history,” not otherwise identified or described, he was found to be at moderate risk to self and/or others, and given a diagnosis of physical abuse of adult. There is no documented basis for this diagnosis, and the factual sources leading to it are unknown. On March 23, 2007, the family advocacy officer boot-strapped the earlier information to the file and altered the V61.12 diagnosis to perpetrator of spouse abuse, without any explanation, and added an entirely new diagnosis of narcissistic personality disorder, claiming it meets criteria 1 (grandiose sense of self-importance), 2 (preoccupied with fantasies), 5 (sense of entitlement), 7 (lacks empathy), and 9 (shows arrogant, haughty behaviors or attitudes). The bases for those findings were not described, and they appear to be at odds with descriptions of Applicant by his superiors and coworkers – information that no healthcare provider or Command leadership ever sought to provide. Despite the comments made, Applicant was not deemed to be suicidal or homicidal, and the risk remained moderate. He was scheduled to return in two weeks for a risk assessment.

There is a Mental Health Record made by the licensed clinical psychologist that the record was being closed without Applicant again being seen. That record contains the following statement: “the impact of the treatment of military was administratively discharged from active duty service based on the results of the [Command Directed Evaluation] and diagnosis of personality disorder.” That characterization is patently false, and without any basis in fact, and the source of the comment is not known. Nevertheless, it was subsequently included in a subsequent DOD CAF-directed mental health evaluation over a decade later, as well as an allegation in the SOR.

As noted above, in 2017, at the direction of the DOD CAF, Applicant was evaluated by a licensed clinical psychologist. It is not known whether she used the DSM-IV-TR or the DSM-5 in making her evaluation. She determined that Applicant has a documented history of narcissistic personality disorder, but also shows some of the atypical thinking such as unusual beliefs, and paranoia, odd speech, and social skill deficits such as a lack of close friends, and social awkwardness commonly seen in an individual with schizotypal personality disorder. She failed to describe the basis for her conclusions of atypical thinking, unusual beliefs, paranoia, odd speech, social skills deficits, lack of close friends, and social awkwardness, especially in light of his many supporters and friends. In the absence of such information, her conclusions are considered baseless. Far more troubling is her reliance on the “historical” information – Applicant’s negative legal history, volatile mood and behaviors, and his history of interpersonal conflicts – furnished to her by the DOD CAF without further investigation.

Since the only negative information in evidence appears to be the complaints of Applicant’s ex-wife and her boyfriend during the period 2004 through 2008, and again in 2012, it is unclear what that negative legal history (except for unverified allegations appearing in a past evaluation that he had bashed someone’s head in at the age of 19, and the accusation by his ex-wife that he had sexually abused his daughter in 2012),

volatile mood and behaviors, and his history of interpersonal conflicts, consists of. The clinician failed to consider any favorable information about Applicant, including his over-a-decade without problems; the continuing actions by his ex-wife in making false allegations against him; the *guardian ad litem's* changed position regarding his relationship with his daughter; his supportive wife, colleagues, and friends; and Applicant's repeated denials of suicidal or homicidal ideations. Instead, she merely bootstrapped her information to that of previous "evaluations" that also contained unverified or unsourced information. She did not explain why there is a poor likelihood for treatment compliance, and did not explain why it is likely that Applicant will have impaired reliability. According to the DSM-IV-TR, "many highly successful individuals display personality traits that might be considered narcissistic. Only when these traits are inflexible, maladaptive, and persisting and cause significant functional impairment or subjective distress do they constitute Narcissistic Personality Disorder." (DSM-IV-TR, at 717) This clinician failed to justify her diagnosis and prognosis under either DSM-IV-TR or DSM-5.

Meaningful due process and fundamental fairness require that individuals be presented with all the evidence used to support allegations against them. Merely furnishing summaries of activities, impressions of third parties, characterizations of information without the documents supporting those characterizations, or conclusions based on unspecified and unverified facts, is not sufficient, especially when the alleged events occurred over a decade ago. Documents considered mental health evaluations, especially those that cannot be considered as such by DODI 6490.1 and DODI 6490.4, are unacceptable.

The existence of a psychological condition does not preclude the granting of a security clearance. Some conditions are unrelated to security issues and others can be mitigated by ongoing treatment or other factors. Unfortunately, mental health evaluations that contain unverified or inaccurate information, or only one side of the story, are far more damaging because of the high level of deference generally given to clinicians and their opinions. In this instance, because of the lack of confidence in the quality, completeness, and accuracy of the most recent "psychological evaluation," I have given it less weight than I might have if: more thorough psychological tests had been administered and scored; the errors in the report had been corrected; Applicant's denials had been even minimally explored; the situation involving the continuing custody struggle had been considered; and unidentified sources had been provided. Accordingly, while AG ¶¶ 29(a), 29(b), 29(c), and 29(d) do not apply, AG ¶ 29(e) applies because I have determined that the duly qualified mental health professional's 2017 opinion, diagnosis, and prognosis are too riddled with errors and omissions to be of much value.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the appellant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966))

There is some evidence against mitigating Applicant's conduct. In 2006, Applicant's then-wife and her boyfriend made allegations to the police and the Command that Applicant had threatened to kill them and Applicant's daughter, as well as kill himself. No-contact orders were issued to Applicant by the Command; he was directed to undergo a mental health evaluation; it was determined that Applicant was at significant risk of potential suicidal and/or homicidal action; it was later determined that he was a moderate risk to self and/or others; he was reported to be in violation of the no-contact orders; he was disciplined and reduced in grade; and he was diagnosed as a perpetrator of spouse abuse, as well as a narcissistic personality disorder. In 2012, Applicant's ex-wife accused him of sexually abusing their daughter. A 2017 psychological evaluation, to which I have given minimum weight because of issues discussed above, described concerns regarding Applicant's judgment and reliability.

The mitigating evidence under the whole-person concept is simply more substantial. Applicant is a 41-year-old employee of a defense contractor. He has been serving as a maintenance control lead with his current employer since February 2010. He is a 1996 high school graduate, with some college credits, but no degree. Applicant enlisted in the U.S. Air Force in October 2001, and he served on active duty until August 2007, when he was honorably discharged. Before the marital and child custody issues arose, Applicant had a stellar military record; he was highly thought of by his Command and his units; his superiors and coworkers praised his duty performance, military bearing, professionalism, and community-service activities; he received recognition for his performance; and he had an excellent reputation for honesty, integrity, and trustworthiness. He was granted a top secret clearance in 2003. His record with his current employer is also one of stellar performance. Character references, including some initially from his military service years as well as some with continuing long-term relationships, have never seen any evidence of suicidal or homicidal ideations, and have never seen Applicant lose his temper or act irrationally.

The sole sources for the problems initially facing Applicant were his then-wife and her boyfriend, shortly before a divorce and custody battle erupted well over a decade ago.

The environment in which the entire situation took place is extraordinarily significant: an ugly divorce and continuing child custody battle. They were the ones alleging that Applicant made certain statements and threats, and took certain actions against them as well as Applicant's daughter, that sparked the actions taken by the civil and military authorities. They were the ones who essentially destroyed Applicant's military career, limited his relationship with his daughter, and subsequently tried destroying his current career. Despite her history of false allegations against three individuals, including Applicant, the authorities accepted her allegations against Applicant, and they flatly denied his side of the story. Applicant's ex-wife made a false allegation against one character reference, claiming that he had cornered her in the kitchen of her residence, and she made another allegation, seemingly not otherwise followed-up upon regarding an instructor who reportedly assaulted her. At least one character witness also noted that Applicant's ex-wife's now-husband (the former boyfriend) kept threatening Applicant.

My comments regarding the quality, thoroughness, and accuracy of the psychological or mental health evaluations made, as well as the absence of significant documentation and other source material in evidence, remain as previously stated. Applicant's past psychological conditions, to the extent that there were some, under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his psychological conditions. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraphs 1.a. through 1.e.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge