



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



In the matter of:)
)
) ISCR Case No. 18-01540
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline I, psychological conditions, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On August 10, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on September 12, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 15, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October

18, 2018. I convened the hearing as scheduled on November 8, 2018. The Government offered exhibits (GE) 1 through 3.¹ Applicant testified and offered Applicant Exhibits (AE) A through D. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on November 26, 2018.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a. He denied the allegations in SOR ¶¶ 1.b through 1.d and 2.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He has a bachelor's degree and two master's degrees. He has never married and has no children. He has worked for a federal contractor since 2005.²

In about June 2014, Applicant attempted suicide. After receiving treatment for physical injuries, he was voluntarily admitted to an inpatient mental-health facility for evaluation and treatment. Applicant testified that he was working long hours, going to work in the morning in the dark and coming home in the evening in the dark. His home needed repairs and he was trying to keep his homeowners' association happy. He testified that he had a multitude of stressors that were increasing. He said he turned into a robot. He was alone, sad, and lost sight of what was important. He was dealing with these emotional issues without professional help. He was performance-oriented, and that attitude overrode what he should have been doing, which was to take care of himself. He lost touch with his personal needs. He was gaunt at the time and not eating healthy foods. When he felt overwhelmed by stress, he cut his wrists. He admitted himself to the hospital where he was treated, and then voluntarily admitted himself to inpatient treatment for two weeks.³

Applicant testified that he was treated by a psychiatrist after he was released from treatment in 2014. He saw the psychiatrist monthly and was prescribed medication. His treatment with this psychiatrist ceased in March 2015. In early 2016 Applicant was treated by a nurse practitioner, who was part of the psychiatrist's practice, through the middle of 2016.⁴

While in treatment, Applicant was diagnosed with a major depressive disorder-single episode. He was prescribed antidepressant drugs, but had a negative reaction to the first medication. It was then changed to one he could tolerate. He remained on the medication until August 2016 when he was told by the nurse practitioner that he could

¹ Hearing Exhibit (HE) I is the discovery letter.

² Tr. 15-16.

³ Tr. 35-38, 44-45, 53.

⁴ Tr. 27-31, 38-40, 45-48.

reduce the medication based on his own determination of his needs. He no longer takes this medication.⁵

In February 2018, Applicant participated in a government-requested psychological evaluation conducted by a duly qualified mental health professional, a neuropsychologist. A series of psychological tests were conducted. He was diagnosed with major depressive disorder, recurrent severe, with psychotic symptoms.⁶

Applicant's prognosis by the neuropsychologist is guarded due to untreated symptoms of mood disturbance and psychosis, and limited awareness of his mental status. She noted that Applicant's reliability, judgment, and trustworthiness could be affected by his psychiatric symptoms.⁷ Applicant disagreed with the diagnosis.⁸

Applicant returned to the psychiatrist who previously treated him in 2014 to 2015. He wanted the psychiatrist to evaluate the government's mental health professional's opinion. Applicant provided a two-page medical record from the psychiatrist. The report provided the following information. The last time Applicant was seen by the psychiatrist was in March 2015. He said Applicant did well until July 2016, when he returned to the practice and was seen by a nurse practitioner. He was restarted on medication for depression. He took the medication until February 2017. Applicant told the psychiatrist that he was feeling better at that time and stopped psychiatric treatment. Since then Applicant did not have additional contact with the psychiatrist. The report stated that on October 21, 2018, Applicant came to see him because he had received an evaluation from a neuropsychologist and was diagnosed with a major depressive disorder, recurrent, severe with psychotic features. He told the psychiatrist that he was worried about his job. He told the psychiatrist that he had done well at his job and denied issues with depression, severe anxiety, paranoia, sleep disturbance or other symptoms. He further disclosed he had a girlfriend of four years, and he was close with his parents. He denied any current stressors.⁹

The medical report further stated that the psychiatrist reviewed the government neuropsychologist's opinion. He stated that he did not doubt the report about Applicant's past history content, but he may have a different conclusion. He further stated that judging by current symptoms, the psychiatrist would opine that Applicant suffers from anxiety disorder not otherwise specified. Applicant may also have obsessive compulsive traits. The psychiatrist stated he did not see any current evidence of a major depressive disorder or psychotic symptomatology. He further stated: "I want to clarify that this does not mean

⁵ Tr. 27-31, 38-41.

⁶ GE 3.

⁷ GE 3.

⁸ Tr. 42.

⁹ Tr. 26, 45-48.

that it was not true before.”¹⁰ Applicant testified that when he returned to see the psychiatrist in October 2018, the psychiatrist did not perform nor did he participate in any new or updated tests.¹¹

Applicant completed a security clearance application (SCA) in September 2015. Section 21-Psychological and Emotional Health, asked in the last seven years have you consulted with a health care professional regarding an emotional or mental health condition or were you hospitalized for such a condition. The question stated: “Answer ‘No’ if any of the counseling was for any of the following reasons and was not court ordered: strictly marital, family or grief not related to violence by you.” Applicant answered “no” to the question and failed to disclose his 2014 hospitalization; his mental-health treatment after his suicide attempt; his subsequent mental-health treatment where he was diagnosed with a major depressive disorder, initial episode with psychotic features; prescribed anti-depressant medication; and received subsequent treatment at a different mental health and counseling facility through at least March 2015.

Applicant was asked by Department Counsel if the word “hospitalize” triggered a thought that maybe he should disclose his hospitalization. He testified:

I did not know who to ask and so I thought I was answering appropriately at the time, given the answer no if I –not everyone knows what happened to me and that was my personal privacy right I felt. I did the best I could to answer the question honestly and truthfully and I signed the medical release forms, you know, at the end willingly.¹²

Applicant was asked by Department Counsel if he reported his hospitalization after the June 2014 incident. Applicant testified: “They knew I was hospitalized. They don’t know why I was hospitalized. But HR was contacted and then security, so.” When further questioned about whether anyone inquired as to the reason for Applicant’s hospitalization, he testified: “They respected personal privacy, you know. They knew I was out and I was, you know, receiving treatment at a facility.”¹³ He confirmed his employer knew he was at a mental-health facility. He was on short-term disability while he was an outpatient until November 2014 and then he worked part time in December. He resumed full-time employment in January 2015.¹⁴

Applicant’s explanation for his failure to disclose the above requested information was because he misinterpreted the question. He said he interpreted “grief” to mean he did not have to disclose the information because the reason he attempted suicide was

¹⁰ AE C.

¹¹ Tr. 32-33, 48-50.

¹² Tr. 54.

¹³ Tr. 58.

¹⁴ Tr. 58-61.

because he was grieving. He also said he was dealing with a multitude of stressors. During his background interview with a government investigator in December 2016, he explained he considered his treatment as being grief-related following a breakup with his girlfriend. He also explained he was feeling depressed and overwhelmed because he was working long hours and his father was having health issues. He said the combination of these stressors resulted in his suicide attempt.¹⁵

The SCA specifically asked about hospitalization, highlighting the need to disclose this type of information. It is not believable that 15 months after Applicant was voluntarily hospitalized for two weeks after a suicide attempt that he did not think he had to disclose it. When Applicant completed the SCA in September 2015, he had previously stopped seeing his psychiatrist in March 2015, and he was still on medication for depression. He spent months as an outpatient and was on short-term disability due to mental-health issues. Although he told the investigator that there were many stressors that caused him to attempt suicide and one of them was grief, he described many others. I did not find Applicant's explanation credible. Applicant deliberately failed to disclose his mental-health conditions on his SCA as required.

Applicant provided character letters from a friend and his girlfriend that describe him as professional, intelligent, funny, steadfast, optimistic, encouraging, proud, and loyal. He testified that his girlfriend is part of his support system. He provided performance evaluations from 2015 and 2016. His overall scores were 3.4 and 3.8 out of 5.0. He also provided a 2017 performance form indicating with comments from supervisors and leaders noting he had done an outstanding job.¹⁶

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

¹⁵ Tr. 20-26, 35-38, 44-45, 53.

¹⁶ Tr. 19-20; AE A, D.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I: Psychological Conditions

The security concern 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 interference 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. I have considered all of the disqualifying conditions under AG ¶ 28, and the following are potentially applicable:

(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; and

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

Applicant attempted suicide in June 2014 by cutting his wrists. He was treated for physical injuries and then he was voluntarily hospitalized as an inpatient to a mental-health facility for evaluation and treatment. Applicant was diagnosed by a duly qualified mental-health professional, a psychiatrist, with major depressive disorder, initial episode, with psychotic features in June 2014. He was again diagnosed in February 2018, by a duly qualified mental health professional, a neuropsychologist, with major depressive disorder, recurrent, severe, with psychotic symptoms. Applicant's prognosis by the neuropsychologist is guarded due to untreated symptoms of mood disturbance and psychosis, and limited awareness of his mental status. The neuropsychologist further noted that his reliability, judgment, and trustworthiness could be affected by his psychiatric symptoms. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

(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 evidence is insufficient to establish any of the above mitigating conditions. The record does not contain a favorable prognosis from a duly qualified medical professional employed by, or acceptable to and approved by the U.S. Government, or a recent medical opinion that Applicant's condition is under control, in remission, or has a low probability of recurrence or exacerbation. There is no evidence that his condition was temporary. He provided an opinion from his former doctor who Applicant visited in October 2018. Applicant had not been treated or evaluated by that doctor since March 2015, despite disagreeing with the more current diagnosis and prognosis. I have considered that doctor's opinion, but it does not outweigh the more recent diagnosis by a government approved mental-health professional. The evidence is insufficient to conclude the issues raised have been mitigated and are no longer a security concern.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

There is sufficient evidence to conclude Applicant deliberately failed to disclose on his September 2015 SCA his hospitalization and treatment by a health care professional regarding a mental health condition. Applicant attempted suicide in June 2014, was treated for his physical injuries, and then voluntarily admitted himself as an inpatient to a mental-health facility for two weeks for evaluation and treatment. He was diagnosed by a psychiatrist with major depressive disorder, initial episode, with psychotic features in June 2014; prescribed anti-depressant medications; and received treatment at a mental-health center through March 2015. He stated he believed he did not need to disclose this information because the language of the question said he did not have to disclose it if the counseling was for grief. He said he was grieving a breakup with his girlfriend, but there

were a multitude of stressors that caused him to attempt suicide. I found Applicant's explanation was not believable and disingenuous.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 were considered:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence that Applicant made prompt, good-faith efforts to correct his omissions or falsifications made when completing his SCA. Applicant's failure to disclose to the Government the information about his background that was requested is not minor. The Government relies on those seeking security clearances to be honest during the security clearance process. His intentional failure to do so casts doubt on his reliability, trustworthiness and good judgment. The above mitigating conditions do not apply.

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 applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under

Guideline I and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 36-year-old highly educated man. He experienced mental health issues and attempted suicide in 2014. At this time, insufficient evidence was presented to mitigate the psychological conditions raising security concerns. Applicant deliberately failed to disclose this information on his SCA. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline I, psychological conditions and Guideline E, personal conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge