



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



In the matter of: )  
)  
) ISCR Case No. 18-01930  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Carol A. Thompson, Esq.

07/01/2019

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct and psychological conditions security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 17, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and I (psychological conditions). Applicant responded to the SOR on December 18, 2018. On January 2, 2019, he requested a hearing before an administrative judge. The case was assigned to me on April 4, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 18, 2019, scheduling the hearing for May 29, 2019. The hearing was convened as scheduled.

## **Procedural and Evidentiary Rulings**

### **Evidence**

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

### **Motion to Amend SOR**

Department Counsel's motion to amend the SOR by changing the year in SOR ¶ 1.c from "2018" to "2017" was granted without objection.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since 2014. He previously worked for the same employer from 2008 to 2009 and 2010 to 2012. He seeks to retain a security clearance, which he has held since about 2008. He has a bachelor's degree, which was awarded in 2009. He married and divorced in 2010. He married again in 2014. He has two children. (Transcript (Tr.) at 17-19, 38-41; GE 1; AE D)

Applicant regularly used marijuana from about 2010 through November 2013 while holding a security clearance. His brother was a marijuana user and lived with him during that period. Applicant's father moved in with them in about 2012. His father suffers from mental illness, dementia, and possibly post-traumatic stress disorder (PTSD) from his service in Vietnam. His father engaged in erratic behavior, including exposing himself. Applicant stated that he and his brother were under a great deal of stress from caring for his father, which significantly contributed to their marijuana use. (Tr. at 38-39, 46-50, 62-67, 75; Applicant's response to SOR; GE 1)

Applicant provided an inconsistent history of his marijuana use. He reported his marijuana use on his February 2015 Questionnaire for National Security Positions (SF 86). He wrote that he periodically used marijuana as a "stress reliever," with the first use in 1998 and the most recent use in "08/2012 (Estimated)." In response to DOHA interrogatories, he wrote that he used marijuana monthly from 1998 to 2000; no use from 2000 to 2010; and weekly from 2010 to 2013. Upon his hospitalization, as discussed below, he reported that he was smoking marijuana on a daily basis. He testified that he started using marijuana regularly in 2013, then later admitted that he smoked marijuana with his brother since 2010. He stated that he used it on a weekly basis, and then admitted using it almost daily in 2013. There is no evidence of any illegal drug use after his hospitalization in 2013. He signed a statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility. (Tr. at 50-51, 62-63, 66, 75; Applicant's response to SOR, enclosure (encl) 4; GE 1, 2)

Applicant stated that any discrepancies about his marijuana use were due to his bad memory. He asserted that his memory problems could be from head trauma he suffered when he was younger during gymnastics and wrestling. He also believes it could be associated with stress and his attention-deficit/hyperactivity disorder (ADHD). (Tr. at 63-64).

Applicant was voluntarily admitted to a psychiatric facility on November 24, 2013. He was accompanied by his family. His family told the staff that he had expressed suicidal ideation. During his intake interview, it was reported that he was cooperative, but it was also reported that he was “very grossly psychotic and delusional, disorganized, loose, incoherent, [and] making bizarre statements.” He had been running in the streets and entering the homes of strangers without permission. The admission diagnosis by a psychiatrist was bipolar affective disorder, not otherwise specified, currently depressed with psychosis and in acute exacerbation; and marijuana abuse, intermittent. (Applicant’s response to SOR; GE 3)

Applicant was placed on medication. His mood stabilized, and his thoughts were more composed. He was motivated to seek outpatient counseling and to take his medications. He was discharged home to resume outpatient care on December 2, 2013. Upon his discharge “no suicidal thoughts [were] noted; [and] no psychosis [was] noted.” The discharge diagnosis by the attending psychiatrist was bipolar affective disorder, not otherwise specified, currently manic with psychosis; and marijuana abuse, severe. (Applicant’s response to SOR; GE 3)

Applicant continued to be seen by the psychiatrist for a period after his discharge, and he continued with his medication. He did not feel that the medication was necessary, and he discontinued seeing the psychiatrist and taking the medication in about 2014. He stated that the psychiatrist wanted him to continue with the medication, but he did not feel that she was listening to him; that she was not acting in his best interest; and that “she didn’t truly care about [him] as a patient.” (Tr. at 68-71; Applicant’s response to SOR)

Applicant was evaluated at the DOD’s request by a licensed clinical psychologist in February 2017. The diagnosis was bipolar I disorder, current episode, hypomanic; and cannabis use disorder, in prolonged remission. The prognosis was “[p]oor, without treatment compliance.” The psychologist wrote:

I expressed to [Applicant] that I believed that his diagnosis from the hospital was probably correct, and that it would be wise to consider returning to his psychiatrist for follow-up treatment. His face immediately fell, and he became serious and sad for the only time in the interview. He was not convinced that he did indeed have a mental health problem that could compromise his judgment, but stated that he would return to see his psychiatrist for medication. However, because hypomanic episodes are pleasant and enjoyable, especially relative to medicated states, compliance with medication is often poor early in the disorder, just as it has been with [Applicant]. Until he has demonstrated a good track record

of compliance with treatment, he is at risk for another manic episode, during which his judgment and reliability will be severely impaired. (GE 4)

Applicant does not agree with the diagnosis. He feels the psychologist rushed the evaluation. He has received regular counseling from a licensed clinical social worker since April 2018. He was diagnosed with adjustment disorder, unspecified. (Tr. at 44, 52-59, 71-74) The LCSW reported:

In my observation of [Applicant] over the past several months I see no reason he should not continue to work at his present job and continue to function at a high-level. I see no reason from my sessions and interaction with [Applicant] that a security clearance should be revoked and do not think he poses a risk to national security. . . . I see no evidence of the psychotic episode or bipolar affective disorder, depression or psychosis. [Applicant] has not been taking medications according to the records since 2014 and it has not been indicated since I have been working with him since April of 2018. I have not needed to refer [Applicant] for a medication consult for bipolar disorder or any other psychiatric diagnosis since I've been seeing him. I have seen [Applicant] several times a month since April, 2018. I believe he is emotionally stable and is an asset to his work place and [is] a productive team member. (Applicant's response to SOR, encl 5)

Applicant sought his own evaluation from a psychologist and a licensed clinical psychologist in October 2018. They diagnosed him with adjustment disorder, unspecified. They recommended therapy, stimulating self-care activities, a healthy diet, regular exercise, and a proper amount of sleep in order to promote a more even mood and better focus. The evaluation further noted:

It is plausible that [Applicant] may have been experiencing significantly distressing thoughts and feelings associated with anxiety and panic when he was hospitalized in 2013 due to situational stressors at that time, however his functional abilities across domains seem to be considerably stable in recent years. [Applicant] may be experiencing some symptoms of anxiety related to his current adjudicative proceedings, however not to a clinical or otherwise abnormal level compared to other individuals in his age category. (Applicant's response to SOR, encl 6)

Applicant married in 2014 and has two young children. His father and brother moved out in about 2014. His father is living in an assisted living facility. There is no evidence of recurrence of psychotic or delusional behavior. He is an active member of his church. He has received guidance and counseling through his church, and his faith has played a significant role in his development. His wife does not believe he is bipolar, and she has seen no evidence of erratic behavior. She described Applicant as calm, even-keel, and a very peaceful person. (Tr. at 37-46, 55-56, 71, 75)

Applicant called witnesses and presented documents and letters attesting to his strong moral character and outstanding job performance. He is praised for his emotional stability, character, trustworthiness, and honesty. (Tr. at 16-36; Applicant's response to SOR)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the 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. 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.

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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. The following is potentially applicable in this case:

- (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.

Applicant was voluntarily admitted to a psychiatric facility in November 2013. It was reported that he was “very grossly psychotic and delusional, disorganized, loose, incoherent, [and] making bizarre statements.” He had been running in the streets and

entering the homes of strangers without permission. AG ¶¶ 28(a) and 28(c) are applicable.

Applicant was placed on medication at the hospital. His mood stabilized, his thoughts were more composed, and he was discharged to outpatient care with no psychosis noted. He continued to be seen by the psychiatrist for a period after his discharge, and he continued with his medication for a period. The psychiatrist wanted him to continue with the medication, but Applicant did not feel that the medication was necessary, and he discontinued seeing the psychiatrist and taking the medication in about 2014. AG ¶ 28(d) has some applicability. However, Applicant is currently following the medical advice of the LCSW and the psychiatrist who performed the evaluation. Furthermore, without direct evidence from the treating psychiatrist, it is difficult for me to conclude that the psychiatrist did not at least reluctantly go along with the decision to cease medication. SOR ¶ 1.b is concluded for Applicant.

Applicant was evaluated at the DOD's request by a licensed clinical psychologist in February 2017. The diagnosis was bipolar I disorder, current episode, hypomanic; and cannabis use disorder, in prolonged remission. The prognosis was "[p]oor, without treatment compliance." The psychologist also opined that until Applicant "has demonstrated a good track record of compliance with treatment, he is at risk for another manic episode, during which his judgment and reliability will be severely impaired." AG ¶ 28(b) is applicable.

AG ¶ 29 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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.

At the outset, it is noted that Applicant's drug abuse and mental health issues cannot be considered in a vacuum or in a piecemeal manner. They have some connectivity, both in their effect on Applicant, and in addressing mitigation of security concerns. There is no evidence of recurrence of psychotic or delusional behavior or illegal drug abuse since the 2013 hospitalization. Applicant has received counseling from an LCSW since April 2018. He received his own evaluation from a psychologist and a licensed clinical psychologist. Both the LCSW and the psychologists diagnosed him with adjustment disorder, unspecified, with no significant concerns about his judgment, reliability, and trustworthiness. Applicant presented lay testimony to his emotional stability and excellent job performance.

I give greater weight to the diagnosis at the hospital of bipolar affective disorder, not otherwise specified, currently manic with psychosis, and the diagnosis during the DOD-requested evaluation of bipolar I disorder, current episode, hypomanic. Those diagnoses account for the psychotic and delusional behavior identified when Applicant was hospitalized. Conversely, I am unable to reconcile the diagnoses of adjustment disorder, unspecified, with that behavior. I find that Applicant has not rebutted the findings in the psychological evaluation. None of the above mitigating conditions, individually or collectively, are sufficient to alleviate psychological conditions security concerns.

#### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:



(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant used marijuana from about 2010 through November 2013 while holding a security clearance. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the drug involvement and substance misuse guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established for the marijuana use.

SOR ¶ 2.a cross-alleges the three psychological conditions allegations as personal conduct. Applicant's psychological issues do not generate personal conduct security concerns. SOR ¶ 2.a is concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

There is no evidence of illegal drug use after Applicant's hospitalization in November 2013. I nonetheless have lingering concerns. Applicant chose to violate the law, sometimes on a daily basis, while holding a security clearance. I am also concerned about the lack of clarity and inconsistent accounts of his marijuana use. Either from poor memory or intentional obfuscation, I am not confident that I know the full extent of his drug use. The conduct continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. The mitigating information is insufficient to mitigate all the personal conduct security concerns.

### **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 relevant 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 have incorporated my comments under Guidelines E and I in my whole-person analysis.

Applicant used marijuana regularly, and sometimes on a daily basis, while holding a security clearance. He had a psychotic episode in November 2013, requiring his hospitalization. His treating psychiatrist and the psychologist who performed the evaluation at the DOD's request both diagnosed him with bipolar disorder. The prognosis was "[p]oor, without treatment compliance." The psychologist also opined that until Applicant "has demonstrated a good track record of compliance with treatment, he is at risk for another manic episode, during which his judgment and reliability will be severely impaired." I also considered the lay testimony and the opinions of the LCSW and the psychologists who evaluated Applicant at his request. However, the protection of the national security is the paramount consideration. It is required that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and psychological conditions security concerns.

### **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 and 1.c:	Against Applicant
Subparagraph 1.b:	For Applicant

Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

**Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge